

# **RECORD OF TRIAL COVER SHEET**

**IN THE  
MILITARY COMMISSION  
CASE OF**

**UNITED STATES**

**V.**

**ALI HAMZA AHMAD  
SULAYMAN AL BAHLUL**

**ALSO KNOWN AS:**

**ALI HAMZA AHMED SULEIMAN AL BAHLUL  
ABU ANAS AL MAKKI  
ABU ANAS YEMENI  
MOHAMMAD ANAS ABDULLAH KHALIDI**

**No. 040003**

**VOLUME VII OF \_\_\_\_ TOTAL  
VOLUMES**

**1<sup>ST</sup> VOLUME OF TRANSCRIPT  
AUG. 26, 2004 & JAN. 11, 2006 SESSIONS  
(REDACTED VERSION)**

**United States v. Ali Hamza Sulayman al Bahlul, No. 040003**

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A more detailed index for each volume is included at the front of the particular volume concerned. An electronic copy of the redacted version of this record of trial is available at <http://www.defenselink.mil/news/commissions.html>.

Some volumes have not been numbered on the covers. The numerical order for the volumes of the record of trial, as listed below, as well as the total number of volumes will change as litigation progresses and additional documents are added.

After trial is completed, the Presiding Officer will authenticate the final session transcript and exhibits, and the Appointing Authority will certify the records as administratively complete. The volumes of the record of trial will receive their final numbering just prior to the Appointing Authority's administrative certification.

Transcript and Review Exhibits are part of the record of trial, and are considered during appellate review. Volumes I-VI, however, are allied papers and as such are not part of the record of trial. Allied papers provide references, and show the administrative and historical processing of a case. Allied papers are not usually considered during appellate review. *See generally United States v. Gonzalez*, 60 M.J. 572, 574-575 (Army Ct. Crim. App. 2004) and cases cited therein discussing when allied papers may be considered during the military justice appellate process, which is governed by 10 U.S.C. § 866). For more information about allied papers in the military justice process, see Clerk of Military Commission administrative materials in Volume III.

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UNITED STATES

v.

COMMISSIONS HEARING

ALI HAMZA AHMAD SULAYMAN AL BAHLUL  
a/k/a Ali Hamza Ahmed Suleiman al Bahlul  
a/k/a Abu Anas al Makki  
a/k/a Abu Anas al Yemeni  
a/k/a Mohammad Anas Abdullah Khalidi

held at

Guantanamo Bay, Cuba

on

26 August 2004

PERSONS PRESENT:

PRESIDING OFFICER: Colonel Peter E. Brownback III, USA  
PROSECUTION COUNSEL: Commander [REDACTED] USN  
ASST PROSECUTOR: Lieutenant Colonel [REDACTED] USMC  
Captain [REDACTED] USA  
DEFENSE COUNSEL: Lieutenant Commander Philip Sundel, USN  
ASST DEFENSE COUNSEL: Major Mark Bridges, USA  
MEMBERS: Colonel [REDACTED] USMC  
Colonel [REDACTED] USMC  
Colonel [REDACTED] USAF  
Lieutenant Colonel [REDACTED] USAF  
ALTERNATE MBR: Lieutenant Colonel [REDACTED] USA  
COURT REPORTERS: Sergeant [REDACTED] USMC

The Commission Hearing was called to order at 0931,  
26 August 2004.

PO: The military commission is called to order.

P (CDR [REDACTED]): This military commission is convened by Appointing Order number 04-003, dated June 28th 2004; copies of which have been furnished to the members of the commission, counsel, and the accused, and which will be marked as Review Exhibit 1 and attached to the record. There are no corrections noted to the appointing order. The Presidential determination that the accused may be subject to trial by military commission has been marked as Review Exhibit 2 and has been provided to all members.

The charge has been properly approved by the appointing authority and referred to this commission for trial. The prosecution caused a copy of the charge in English and Arabic, the accused's native language, to be served on the accused on August 12, 2004.

The prosecution is ready to proceed in the commission trial of the United States versus Ali Hamza Sulayman al Bahlul.

The accused, commission members, and alternate commission member named in the appointing order and detailed to this commission are present.

All detailed counsel are present.

Gunnery Sergeant [REDACTED] has been detailed reporter for this commission and has previously been sworn.

PO: I'll note that she's gotten a promotion that she isn't aware of.

P (CDR [REDACTED]): Yes, sir. Sergeant [REDACTED]

Security personnel have been detailed for this commission and have been previously sworn.

The interpreters have been detailed for this commission and have also been previously sworn. The full names of the interpreters who are providing interpretation for today's hearing are contained in Review Exhibit 3, a copy of which has been previously provided to the

defense and the reporters for inclusion in the record.

The bailiff has also previously been sworn.

PO: Previously marked, shown to counsel, and signed is RE 4, a protective order concerning the identity of the interpreters. Either side object to that order?

P (CDR [REDACTED]) No, sir.

DC (LCDR Sundel): No, sir.

PO: I have been designated as the presiding officer of this commission by the appointing authority, and I have been previously sworn. All other members of the commission and the alternate member will now be sworn.

All persons in the courtroom, please rise.

*The members were sworn.*

PO: The commission is assembled.

I would ask before we continue all people who are going to speak to remember that we have to speak so the interpreters, the translators can translate.

Before continuing with preliminary matters, it is necessary for me to inquire into the accused's need for an interpreter.

Mr. al Bahlul, do you understand and speak English?

ACC: I prefer to have an interpreter.

PO: Would you repeat the translation, please?

ACC: I prefer to have an interpreter present.

PO: What language do you speak?

ACC: Arabic language.

PO: As I said earlier, translators have been appointed to this case. Do you understand the translation that is being made?

ACC: Clear.

PO: Commander [REDACTED] please state the detailing and qualifications of the prosecution.

P (CDR [REDACTED]) Sir, all members of the prosecution have been detailed to this military commission by the chief prosecutor. All members of the prosecution are qualified under Military Commission Order Number 1, Paragraph 4(b), and we have previously been sworn. No member of the prosecution has acted in any manner which might tend to disqualify us in this proceeding. The detailing document has been marked as Review Exhibit 5 and previously provided to the court reporter.

PO: Commander Sundel, have either you or Major Bridges -- well, have you and Major Bridges been properly detailed to this case?

DC (LCDR Sundel): We have, sir.

PO: Has either of you acted in any manner inconsistent with your duties?

DC (LCDR Sundel): Not that I'm aware of.

PO: I'll take that for a no.

Mr. al Bahlul, pursuant to Military Commission Order Number 1, you are now at this moment, represented by your detailed counsel, Commander Sundel and Major Bridges. They are provided to you at no expense. You may also request a different military lawyer to represent you. If the person you ask for is reasonably available, he or she would be appointed to represent you. If that happens, your detailed counsel, Commander Sundel and Major Bridges, would normally be excused; however, you could request that they remain on the case.

In addition, you may request to be represented by a civilian lawyer. A civilian lawyer would represent you at no expense to the government. Such a lawyer must be a United States citizen and certified to practice law in the United States. She or he must be eligible for a secret clearance and agree in writing to comply with the rules of the commissions. If you had a civilian lawyer, the detailed counsel, Commander Sundel and Major Bridges would remain on the case. Do you understand what I just said?

ACC: Clear.

PO: Do you have any questions about your rights to be being represented before this commission?

ACC: Am I allowed to represent myself?

PO: I'm referring to Military Commission Order Number 1, Paragraph 4(c), sub (4). It states, the accused must be represented at all relevant times by detailed defense counsel. So the answer is, no, you're not allowed to represent yourself.

ACC: Excuse me. If I can ask the judge --

PO: Please speak up.

ACC: -- if I can to know the reason that disqualifies me from representing myself. I would like to know why, and if not --

PO: Okay. Are you asking to represent yourself before this commission?

ACC: Yes, I would like to represent myself.

PO: Sir, could you please try speaking -- or move the mic closer to yourself.

ACC: Yes, I would like to represent myself. [Interpreter: Is that better?]

PO: Let's talk about that. I want to go over several matters with you so that you understand what such a request means. Let me talk about your detailed counsel.

To be detailed counsel, they have to be qualified attorneys; that means that they have to be admitted to practice before the highest court of a state, and be commissioned as a judge advocate in one of the military services of the United States.

Commander Sundel, you're obviously Navy. What state?

DC (LCDR Sundel): I am barred in Maryland, sir.

PO: Major Bridges you're Army. What state?

ADC (Maj Bridges): Kentucky, sir.

PO: Okay. So Commander Sundel is admitted to practice in Maryland, and he's been certified by the Judge Advocate General of the Navy as a judge advocate. Major Bridges is admitted in Kentucky, and he's been certified by the Judge Advocate General of the Army.

Okay. Second, before they got here, they were nominated; they were chosen by the Navy and the Army as representatives of those services to serve as defense counsel. And then they were selected as defense counsel by Colonel Gunn who is the Chief Defense Counsel of the commissions. He's an Air Force officer. They have to have a security clearance, and they both do have security clearances; correct?

DC (LCDR Sundel): Yes, sir.

ADC (Maj Bridges): Yes, sir.

PO: So they can see all the information for that tribunal or commission. In addition to graduating from college and law school, they've each received extensive training in military law which is, at times, a confusing subset of law. From the time they became judge advocates, they've learned not only military legal principles and terminology, but they've learned military terminology about troops and airplanes and ships and things like that. And they've become familiar with the general military practice and how things are handled in the Departments of the Navy, Army, and the Department of Defense.

And -- I resist making a comment about Kentucky -- they are both fluent in English, which is a necessity here.

Perhaps even more importantly, they are not on trial here, which means that they are not personally involved, which means that they can remain objective in situations when a person about whom things are being said might become emotional or heated. Do you understand what I've said so far?

ACC: Yes, I understood.

PO: Now, like I said before, Commander Sundel and Major Bridges are both judge advocates. They have both been

detailed to represent you since the 3<sup>rd</sup> of February of 2004. During this period, while I'm not aware of their exact activities since they don't reveal things to me, I feel certain that they have been studying the law which is applicable to these proceedings, preparing various matters to present to the commission and to other authorities, and determining how best to represent you in front of the commission.

Given their background and training, they have the skill and knowledge to force the commission to apply the rules and the law on your behalf; and if they feel that the commission has not done so, they have instant access to computers to make and file motions. They can make objections. They can argue by analogy to federal, military, and international law; and they have research resources, both computer and personal, which will help them insure that your rights are represented or protected in these proceedings. Do you understand what I just said now?

ACC: Yes, I understand. I have a question based on what you said. Are you done?

PO: Not yet.

ACC: When you're done.

PO: No, I'm sorry. Yes, you may ask your question now.

ACC: I have some idea about practicing law in Yemen. [To interpreter]

PO: Excuse me. Could you please lean forward and speak just a little louder.

ACC: I have some idea about practicing law in Yemen.

DC (LCDR Sundel): Excuse me, sir. I'm not sure that was exactly what Mr. al Bahlul said. My understanding is he said that he knows some people who practice law.

INT: I do apologize, sir. Correction, I have --

ACC: Nobody represents me until this point. I wish nobody would interrupt you while I'm talking. I have some people that do practice or are familiar with law in the country of Yemen from different areas.

If the American law, as far as I know, would allow me to be represented by a Yemeni attorney through American system, is it possible that I can be granted this, a Yemeni attorney. And as far as I know, if I'm right, that I cannot be represented by anybody other than an American. Is it possible that the Yemeni attorney, through the American attorney, can be involved in my case?

PO: So we are talking correctly, so I can make sure I understood what you requested, referring again to MCO Number 1, Paragraph 4(c)(3), it states, in talking about civilian counsel -- which just means anyone who's not wearing a uniform -- that the attorney, the civilian must be a United States citizen. And you understood that you -- it appeared to me that you understand that.

Now, is what you are telling me that you want to have a Yemeni attorney provided at no expense to the government, meaning the United States Government, present to assist your detailed counsel, Commander Sundel and Major Bridges for this proceeding? I don't know, that's why I'm asking.

ACC: Yes.

DC (LCDR Sundel): Sir, if I just may?

PO: Yeah, you may.

DC (LCDR Sundel): I think perhaps what we may want to do is to clarify if his first preference is to represent himself; if that is not allowable, his second preference is to be represented exclusively by a Yemeni attorney; and if that is not allowable, his last preference is to be represented by military counsel, with a Yemeni attorney assistant.

PO: Thank you for your assistance, I mean it.

You heard Commander Sundel, so now I'm going to ask you. I explained to you generally your rights to counsel. Detailed counsel, a requested military counsel, a civilian counsel, U.S. citizen, those are your rights to counsel. As you're sitting there, please just tell me, right now, what do you want? Do you want a second talk to someone? Honest, I mean -- do you want to take a --



ACC: I have mentioned previously, and you answered it. I asked if I can represent myself, you said no. But what I meant -- I do not want an attorney representing me. I'll attend the sessions if it's mandatory to attend; I'll be here. If I do have that choice attending the sessions, I'd rather not be here. This is an order.

PO: What was the last word, sir?

ACC: If I do not have -- if it's have to attend the hearing, then I'd rather not attend.

PO: I do not recall directing or stating that you are not allowed to represent yourself. What I said and I read was the provision of the military commission order. I am trying, honestly, to find out your desires and to find out something more about you and those desires. I have not ignored what you said, but I want to find out some more before I say anything in that regard; okay?

ACC: Good.

PO: Commander [REDACTED] did I say, on the record -- if I did -- did I say he couldn't represent himself, or did I read from the -- I'm not trying to trick anyone. I don't remember saying he could not represent himself.

P (CDR [REDACTED]) One moment, sir. Sir, I believe that when you read the instruction, that's the reasonable interpretation of the instruction.

PO: Order, but that's fine.

P (CDR [REDACTED]) The order that you read.

PO: Okay. I get to interpret my words, he gets to translate them.

Before I say anything on that subject, Mr. al Bahlul, I'd like to know something more about you. And if you wish, you can take a moment and talk with anyone and you can tell me whether or not you want to answer these questions.

How old are you?

ACC: You can ask me anything. I don't need to go back to anybody.

PO: How old are you?

ACC: Thirty-six years.

PO: How many years of formal education do you have?

ACC: Sixteen years.

PO: Have you spent much time in the American culture other than your time here at Guantanamo?

ACC: This is personal, to me?

PO: Yes, personally.

ACC: Are you interested or is it important to you that I answer this question?

PO: I'm asking the question because the proceedings that you're in front of are derived from our culture, and different cultures have different ways of handling things. And I guess what I'm asking is this: Is your knowledge of our culture sufficient to make things that would appear strange if you had no knowledge, not appear so strange? That's all I'm asking.

ACC: I have large amount of knowledge.

PO: Okay. Talking about language, we are using a translator now, but there are things that are said, no matter how good the translator might be, that lose something in translation. And therefore, I ask: Is your fluency level in English such that you can understand most of what's said without translation?

ACC: Not a large scale.

PO: Have you had any formal training in the law? And here I'm not talking just about the American legal system, but any legal training.

ACC: I've read legal matters and books.

PO: Other than the legal motions that you've seen, have you ever studied international law or the law of war? It's not something that most people may much attention to.

ACC: Yes, I did. I've read.

PO: You have been given a copy of the charges against you at this proceeding -- and before you answer this question, please take time to consider my use of the word "understand". When I say "understand", what I mean is, do you comprehend, as they are written, what they are charging? Having put that caveat -- having put that explainers in, do you understand the charges against you?

ACC: Very good.

PO: Do you realize that because -- well, that in accordance with the President's military order and Military Commission Order Number 1, there may be evidence against you which you would not be allowed to see because of its protected nature?

ACC: Do you have another question? The protected information, this is something that is intentional. The people that started this were the British, relating to Muslims. I don't think it's fair that the evidence would not be presented and the accused cannot defend himself without seeing such evidence for himself, or even through an attorney.

PO: You have made in your response, what you just said, a challenge to the structure, the way the commission is set up. And the commission will take a motion -- piece of paper on this.

That wasn't my question. My question was: Whether you believe it's fair or not fair, do you understand right now that you will not be able to see certain evidence because it is either classified or protected. Right now, you can't see it. Do you understand that?

ACC: For the protected evidence, let's put it aside. It's all well known in all those -- the civilian or the local, the decision is the evidence, especially if that decision is under no pressure, and based on the person without any -- without being placed under any pressure, and based on personal decision or preference.

I know that the presiding officer is not interested that I decide that I am from al Qaida or not. Let the proceedings take its course regarding if I am guilty or not.

One point that I would like the judge to understand and the members or the panel, and the people -- the people that are the jurors, or the people that were sworn in, and the prosecutor, and the defense team that until this point does not represent me, and the visitors and detainees, and if it's being, you know, viewed via media channels, people that are watching as well, people of the entire globe should know, I testify that the American government is under no pressure. Nobody has put the United States Government under pressure. I am from al Qaida, and the relationship between me and September 11<sup>th</sup> --

PO: Members -- thank you. Please stop for a second.

Members, you all understand that I am questioning Mr. al Bahlul in order to determine his representation. You all understand that; right? You all understand that Mr. al Bahlul has not been placed under oath?

Apparently so.

You further understand that none of this is evidence in any way. Do you all understand that?

Apparently so.

I apologize for interrupting you.

P (CDR [REDACTED]) Sir, before we go on, we'd note our objection to that statement and ask for a recess.

PO: What do you wish to discuss in the recess?

P (CDR [REDACTED]) I think our objection is noted. We don't think that's an accurate statement of commission law.

PO: Thank you. You may provide a brief on that matter.

P (CDR [REDACTED]) Yes, sir.

PO: Go on.

ACC: I know that this is like an arraignment, and the questions are limited legally, and there is other sessions that will take place. And it's normal from the presiding officer and the others sitting here take their time to see that probably they might render an improper

judgment; so that we don't really go into, you know, side things, you know, over here.

In short, I would like to represent myself, and I'm telling this to the presiding officer, or the judge. For the questions that the judge have asked, for the things that you need to know about me relating to being familiar with the law and the new laws. Specifically, there was new laws that were drafted in the United States specifically after the September 11<sup>th</sup> incident. I would like to file a motion to represent myself and defend myself at the same time.

I can write or everybody in this room can be a witness in the next sessions. Nobody should be worried relating to me causing problems, or being loud, or basically saying things that might be inflammatory. I can give you my word, you know, my verbal promise, that basically I would not, you know, go against that, what I'm saying today.

From your questions, you know, you wanted to know my level of law-wise, you know, legal terms, legal terms relating to the local. I know all the Islamic laws and according to your questions, basically wants to verify my ability. And if the American system would not allow me to defend myself, then I'll be forced to attend and I'll be a listener. Only.

PO: While I'm thinking, let me make a note that's an aside. I have motioned at counsel and Mr. al Bahlul and myself with what I prefer to think of as a slow-down motion solely because we all talk too fast for the translators sometimes.

You stated that up until this time, while Commander Sundel and Major Bridges were detailed as your counsel, they were not representing you.

ACC: They don't represent me.

PO: There's a term in the law called amicus curiae. What it means is a friend of the court. Would you permit Commander Sundel and Major Bridges to file, or to give to the commission on your behalf a motion requesting that you be allowed to represent yourself, which is what you've told me you want to do? Because until someone tells the commission that this order does not apply, the

commission is not able to let you represent yourself. And I further tell you that, based on my experience, the best way to get an answer to your question would be to have a motion filed.

Will you permit them to file a motion on your behalf, not stating that they are representing you?

ACC: If I represent that motion through me, through the legal term, that means I did have them represent me.

PO: No, I have just said that they would file a motion as an amicus, meaning just as a friend of the commission.

ACC: Friends of the commission?

PO: As a --

ACC: As a mediator between the two of us?

PO: I would imagine that sitting there, Commander Sundel and Major Bridges have the desire to get you what you want, if they can. No one on this commission is going to write a brief -- a brief is just the law that's attached to a motion -- which puts forth your side. By allowing them to file an amicus brief, you have said and I've heard, we've all heard, it's on the record that they're not representing you. And you -- by allowing them to file an amicus brief, you're not changing that. You're just getting the benefit -- how long in the service, Major Bridges? JAG Corps?

ADC (Maj Bridges): Twelve-and-a-half years, sir.

DC (LCDR Sundel): About 14 years, sir.

PO: -- of 26-and-a-half years of legal training who are trying to get you what you want on this one issue.

ACC: I would only stick to the verbal offer.

PO: Well, you get your recess, Commander [REDACTED] Court's in recess.

*The Commission Hearing recessed at 1028, 26 August 2004.*

*The Commission Hearing reconvened at 1110, 26 August 2004.*

PO: The commission will come to order. Let the record reflect that all parties present when the commissions recessed are once again present.

In looking at my notes, I note that I failed to mention on the record the defense counsel detailing letter which is already what, Commander [REDACTED]

P (CDR [REDACTED]) Six, sir.

PO: Thank you. Mr. al Bahlul, in the course of our discussions, I believe I determined what it is you want. I'm going to ask you again so that I can make sure that I know. The first thing you want, your desires are that you be permitted to represent yourself before this commission; is that correct?

ACC: Yes.

PO: If that is not permitted, your second choice is to be represented by a Yemeni attorney; is that correct?

ACC: As far as the Yemeni attorney is concerned, if I get the guarantees that he'll not be harmed neither by the Yemeni, nor by the American authority because of the sensitivity of the matter, and the sensitivity of the matter as far as the al Qaida case and the United States of America, if I get guarantees from the Yemeni government and the Americans that they will not be harmed, as far as the sensitivity of the matters, then I can appoint if law permits me to do so.

PO: I'll rephrase my understanding. If you are not allowed to represent yourself, you wish to have a Yemeni lawyer represent you subject to the guarantees you just stated; is that correct?

ACC: This is okay because I don't want anybody to be harmed because of me.

PO: What you have posed, as I believe I stated before, are structural challenges to the commission proceedings. The commission, as it sits here, does not have the authority to make those structural changes.

However, the commission will cause -- will make a transcript of everything that's been said and forward it to the people who can make or authorize structural

changes. You have told me that you do not wish Commander Sundel and Major Bridges to do anything on your behalf.

ACC: Yes, either them or anybody else.

PO: Commander Sundel, speaking for yourself and Major Bridges, recognizing that Mr. al Bahlul says that you do not represent him, I hereby direct you to provide, for forwarding to the appointing authority, a motion. And this motion will address two structural changes and your support -- your legal support -- a motion. The structural changes will be concerning the right of an accused to represent himself, and the right of an accused to get a foreign attorney to represent him.

Y'all have been on the case for a long time. By the -- I'm sorry, I also did not say, you will not in this motion state that you are representing the views or desires of Mr. al Bahlul. Any question about that?

DC (LCDR Sundel): No, sir.

PO: Don't sit down yet. When can you have a well-reasoned and well-researched brief on those matters prepared to send forward?

DC (LCDR Sundel): I think we could have that ready a week from tomorrow, sir. That would be the 3<sup>rd</sup> of September, sir.

PO: Okay. Provide it to prosecution; prosecution, you provide your response to Commander Sundel and Major Bridges in their capacity as detailed counsel who are not representing Mr. al Bahlul by the 17<sup>th</sup> of September.

You provide, Commander Sundel, by the 30<sup>th</sup> of September your final reply and all the matters therewith to the appointing authority, Mr. Altenburg.

I will provide both counsel -- I will provide the prosecution and Commander Sundel and Major Bridges no later than Saturday, a transcript of these proceedings so that you both -- so that the prosecution and the detailed defense counsel may see what Mr. al Bahlul stated verbally on the record. This transcript will be authenticated in due course.

All authenticated means, Mr. al Bahlul, is that I will



review it and sign it and say that's what happened and I will forward it and a certified interlocutory question to Mr. Altenburg for his action. And all that should arrive for him to start work on by the 30<sup>th</sup> of September.

Commander [REDACTED] is there anything else that I can do at this time, in your opinion, to frame the issue or to get this matter resolved?

P (CDR [REDACTED]) No, sir. We believe what you laid out is the approved course of action.

PO: Mr. al Bahlul, you've heard what I've said. The appointing authority will be the one to start the decision making on this process. If you wish to submit any matters to Mr. Altenburg other than what you've stated on the record here today, those matters will have to be forwarded so as to reach him by the 30<sup>th</sup> of September.

ACC: And it is about what?

PO: About the whole thing we've been talking. Earlier, you stated that you did not want to put anything in writing; you wanted it to be all words. I have told you --

ACC: A verbal request. Like he said earlier, verbal request.

PO: What you stated verbally, has been taken down by Sergeant [REDACTED] and it will become written. I am telling you, though, that if you change your mind -- I'm not telling you to change your mind -- I'm saying if you change your mind and you want to submit anything to Mr. Altenburg those matters have got to reach him by the 30<sup>th</sup> of September.

Anything else, Commander [REDACTED]

P (CDR [REDACTED]) No, sir.

PO: Members?

I am not going to set a date for the next hearing in this case. Once Mr. Altenburg or others in the chain make a decision, I'll do something then; okay?

All rise. Court's in recess.

*The Commissions Hearing recessed at 1125, 26 August 2004.*


**AUTHENTICATION OF COMMISSIONS PROCEEDINGS**

*in the case of*

United States v. ALI HAMZA AHMAD SULAYMAN AL BAMLUL

a/k/a Ali Hamza Ahmed Suleiman al Bahlul  
a/k/a Abu Anas al Makki  
a/k/a Abu Anas al Yemeni  
a/k/a Mohammad Anas Abdullah Khalidi

This is to certify that Pages 1 through 18 are an accurate  
and verbatim transcript of the foregoing proceedings.

---

Peter E. Brownback III  
Colonel, U.S. Army  
Presiding Officer

27 AUGUST 2004  
Date



1 [Brackets [] enclose the descriptions of physical  
2 actions in the transcript that the Court Reporter has  
3 added.]  
4

5 [The commission hearing was called to order at 1007,  
6 11 January 2006.]  
7

8 Presiding Officer: This Military Commission is called to  
9 order.  
10

11 A.PROS2: This Military Commission is convened by  
12 Appointing Order Number 04-0003, dated 28 June 2004  
13 as amended by Appointing Order Number 05-0003, dated  
14 4 November 2005; copies of which have been furnished  
15 to the Presiding Officer, counsel, and the accused,  
16 and which have been marked as Review Exhibits 105 and  
17 107 respectively and will be attached to the record.  
18

19 The Presidential determination that the accused may  
20 be subject to trial by Military Commission has been

1 marked as Review Exhibit Number 104 and has been  
2 previously provided to the defense.  
3

4 The charges have been properly approved by the  
5 Appointing Authority and referred to this Commission  
6 for trial.  
7

8 The prosecution caused a copy of the charges in  
9 English and Arabic, the accused's native language to  
10 be served on the accused on 12 August 2004.  
11

12 The prosecution is ready to proceed in the Commission  
13 Trial of the United States versus Ali Hamza Ahmad  
14 Sulayman Al Bahlul.  
15

16 The accused, the Presiding Officer, and all detailed  
17 counsel are present with the exception of Lieutenant  
18 [REDACTED] who was excused from this session by the  
19 detailing authority.  
20

1 A court reporter has been detailed reporter for the  
2 Commission and has been previously sworn. Security  
3 personnel have been detailed to this Commission and  
4 have been previously sworn. The Commission  
5 translators have been detailed for this Commission  
6 and have been previously sworn. Their curriculum  
7 vitae are in Review Exhibits 131 and 132, which have  
8 been attached to the record.

9  
10 Presiding Officer: I've been designated as the Presiding  
11 Officer of this Military Commission by the Appointing  
12 Authority. I've been previously sworn.

13  
14 Okay, before proceeding I've got to inquire into the  
15 accused's need for an interpreter.

16  
17 Mr. Al Bahlul, are you able to understand English?

18  
19 ACC: [Accused speaking in English] I need interpreter.


1 Presiding Officer: Okay. Looking back in the row, I see  
2 that the defense counsel is not at the defense table.  
3 I see a person in a blue shirt. Who are you, sir?

4  
5 INT: I'm the interpreter, sir.

6  
7 Presiding Officer: Come forward.

8  
9 [The interpreter did as the Presiding Officer  
10 directed.]

11  
12 Presiding Officer: What's your name?

13  
14 INT: 

15  
16 Presiding Officer: Okay. Mr. Al Bahlul, do you understand  
17 the language that your interpreter speaks?

18  
19 ACC: [Through the Defense Interpreter] Yes.

20



1 INT: Yes, he does.

2

3 Presiding Officer: Okay. Have you been sworn, sir?

4

5 INT: Yes, I have.

6

7 Presiding Officer: Sir, have you been sworn to perform

8 your duties faithfully?

9

10 INT: Yes, I have.

11

12 Presiding Officer: Okay. Thank you.

13

14 Mr. Prosecutor, please state by whom you've been

15 detailed and your qualifications.

16

17 A.PROS2: Yes, sir. All members of the prosecution have

18 been detailed to this Military Commission by the

19 Chief Prosecutor, Colonel Davis. All members of the

20 prosecution are qualified under Military Commission

1 Order Number 1, Paragraph 4(Bravo) and have been  
2 previously sworn. No member of the prosecution has  
3 acted in any manner which might tend to disqualify us  
4 in this proceeding.

5  
6 The detailing document is now being marked as next  
7 review exhibit in order. I believe Number 134.

8  
9 The prosecution also has sitting at the prosecution  
10 table an assistant who will assist the prosecution  
11 but will not be representing the government.

12  
13 Presiding Officer: Okay I notice, Mr. al Bahlul that  
14 you -- do you have a headset on that I just can't  
15 see?

16  
17 INT: No he doesn't, sir.

18  
19 Presiding Officer: How are you receiving the translation  
20 of what I say?

1  
2  
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19  
20

ACC: [Through Defense Interpreter] Do you mean the level  
of the sound -- the sound level?

Presiding Officer: No what I mean is I am speaking in  
English. I thought the translators were translating  
into a microphone onto -- in a headset that you would  
have on. That's what -- for those who are not  
familiar, Mr. al Bahlul and I are the only people  
left in this courtroom who saw each other in August  
of 2004. At that time you had a headset on. You  
don't have one on today so, my question is, how does  
he know what I am saying?

[Defense interpreter consults with the Accused.]

INT: He hears you and he understands you perfectly.

[Defense Interpreter consults with the Accused.]

1 He hears you and he takes -- and because I translate,  
2 you know, for him, he understands from me basically.

3  
4 [Defense Interpreter consults with the Accused.]

5  
6 He does not speak English very well.

7  
8 Presiding Officer: Okay. Mr. al Bahlul, if I or someone  
9 else says something and the ability of your  
10 translator to tell you what they say when you don't  
11 understand what I say gets too much, please tell me  
12 and I will get the headset mechanism back so that the  
13 people in the booth over there can translate for you.

14  
15 The people in the booth are about to tell me  
16 something.

17  
18 [Defense interpreter consults with Accused.]

1 Presiding Officer: Mr. Prosecutor, do you have any idea  
2 what the translation set-up is?  
3

4 A.PROS2: My understanding of the translation set-up was  
5 that a set of headphones would be available for Mr.  
6 al Bahlul, Your Honor. I'm not sure why we don't  
7 have them. I would like to take a short recess in  
8 place so we can determine where these are.  
9

10 Presiding Officer: Yeah, that would be a good idea.  
11 Court's in recess.  
12

13 [The commission hearing recessed at 1013, 11  
14 January 2006.  
15

16 The commission hearing was called to order at 1016,  
17 11 January 2006.]  
18

1 Presiding Officer: The Commission will come to order. Let  
2 the record reflect that all parties present when the  
3 Commission recessed are once again present.

4  
5 The Commission is delighted to note that you now have  
6 a headset on, Mr. al Bahlul.

7  
8 Mr. al Bahlul, you have a microphone in front of you.  
9 This [indicating] one, if you will speak into it when  
10 you are speaking, that way what you say can be  
11 translated.

12  
13 I am surprised Mr. Translator that I am having to  
14 provide this briefing, but I don't know why this  
15 wasn't done by someone else. Your job is to assist  
16 Mr. al Bahlul talking to others, not repeating his  
17 words to me.

18  
19 INT: Yes, sir.

1 Presiding Officer: If, of course, there is some matter  
2 that, for reasons that I don't know, the translator  
3 and Mr. al Bahlul doesn't understand what is said,  
4 feel free to -- you know, you are there to help him,  
5 okay?

6  
7 INT: Yes, sir.

8  
9 Presiding Officer: Okay. Mr. al Bahlul, we started about  
10 ten minutes ago and we went over some things. Was  
11 your comprehension of that good enough to understand  
12 what we went over or do you want me to start all over  
13 again?

14  
15 ACC: I hear the translation very clearly -- I don't hear  
16 the translation very clearly.

17  
18 Presiding Officer: Okay. The translators are going to  
19 have to speak up or increase the sound because the  
20 Presiding Officer can't hear what you are saying.

1  
2 Say it again, translators.

3  
4 ACC: I don't hear the translation very clearly.

5  
6 Presiding Officer: Fine. We'll start all over again.

7  
8 This Military Commission is called to order again.  
9 Start over prosecutor.

10  
11 A.PROS2: Yes, sir.

12  
13 This Military Commission is convened by Appointing  
14 Order Number 04-0003 dated, 28 June 2004 as amended  
15 by Appointing Order Number 05-0003, dated 4 November  
16 2005; copies of which have been furnished to the  
17 Presiding Officer, counsel, and the accused and which  
18 have been marked as Review Exhibits 105 and 107  
19 respectively and will be attached to the record.  
20



1 The Presidential determination that the accused may  
2 be subject to trial by Military Commission has been  
3 marked as Review Exhibit 104 and has been previously  
4 provided to the defense.

5  
6 The charges have been properly approved by the  
7 Appointing Authority and referred to the Commission  
8 for trial. The prosecution caused a copy of the  
9 charges in English and Arabic, the accused's native  
10 language, to be served on the accused on 12 August  
11 2004.

12  
13 The prosecution is ready to proceed in the Commission  
14 Trial of the United States v. Ali Hamza Ahmad  
15 Sulayman al Bahlul.

16  
17 The accused, the Presiding Officer, and all detailed  
18 counsel are present with the exception of Lieutenant  
19 [REDACTED] who has been excused for this session by the  
20 detailing authority.

1  
2 A court reporter has been detailed reporter for this  
3 Commission and has been previously sworn. Security  
4 personnel have been detailed for this Commission and  
5 have been previously sworn. Commission translators  
6 have been detailed for this Commission and have been  
7 previously sworn. Their curriculum vitae are in  
8 Review Exhibits 131 and 132, which will be attached  
9 to the record.  
10

11 Presiding Officer: I've been designated as the Presiding  
12 Officer of this Military Commission by the Appointing  
13 Authority and I've been previously sworn.  
14

15 Okay before we continue on, we'll get back to the  
16 translator matters. Mr. al Bahlul, you understand  
17 and speak some English, but you are not fluent in  
18 that language; is that correct?  
19

1 ACC: I do not hear anything of what the prosecutor said  
2 because of the low quality of the voice. The level  
3 of the voice is very low.  
4

5 Presiding Officer: Okay. We will start that over again.  
6 Translators, the prosecutor will start--if you can  
7 jack up the gain to the accused's headphones.  
8

9 Now, Mr. al Bahlul after the first sentence that the  
10 translator says on the prosecutor, I will ask you if  
11 you are hearing correctly. If at anytime you can't  
12 hear correctly, please let me know.  
13

14 ACC: I do not hear. I do not hear the voice of a  
15 translator.  
16

17 Presiding Officer: They aren't saying anything right now.  
18 We'll start again. Prosecutor, start again.  
19

20 A.PROS2: Yes, sir.

1  
2 This Military Commission is convened by Appointing  
3 Order Number 04-0003, dated 28 June 2004 as amended  
4 by Appointing Order Number 05-0003, dated 4  
5 November 2005; copies of which have been furnished to  
6 the Presiding Officer, counsel, and the accused,  
7 which have been marked as Review Exhibits 105 and 107  
8 respectively and which will be attached to the  
9 record.

10  
11 Presiding Officer: Did you hear that, Mr. al Bahlul?

12  
13 ACC: I did not hear.

14  
15 Presiding Officer: Okay. Mr. Prosecutor.

16  
17 A.PROS2: Yes, sir?

18  
19 Presiding Officer: We'll have a recess. You will be in  
20 place, I won't, and you all will fix this problem.

1  
2 Court's in recess.  
3

4 [The commission hearing recessed at 1022, 11  
5 January 2006.]  
6

7 [The commission hearing was called to order at 1032,  
8 11 January 2006.]  
9

10 Presiding Officer: This Commission is called to order.

11 Read it again, Sam.  
12

13 A.PROS2: Yes, sir. All parties present when the  
14 Commission adjourned are again present.  
15

16 Presiding Officer: Start from the top.  
17

18 A.PROS2: This Military Commission is convened by  
19 Appointing Order Number 04-0003, dated 28 June 2004  
20 as amended by Appointing Order Number 05-0003, dated

1 4 November 2005; copies of which have been furnished  
2 to the Presiding Officer, counsel, and the accused;  
3 and which have been marked as Review Exhibits 105 and  
4 107 respectively and which will be attached to the  
5 record.

6  
7 Presiding Officer: Can you hear that, Mr. al Bahlul?

8  
9 ACC: Yes.

10  
11 Presiding Officer: Continue.

12  
13 A.PROS2: The Presidential determination that the accused  
14 may be subject to trial by Military Commission has  
15 been marked as Review Exhibit 104 and has been  
16 previously provided to the defense.

17  
18 The charges have been properly approved by the  
19 Appointing Authority and referred to this Commission  
20 for trial. The prosecution caused a copy of the

1 charges in English and in Arabic, the accused's  
2 native language to be served on the accused on 12  
3 August 2004.

4  
5 The prosecution is ready to proceed in the Commission  
6 Trial of the United States versus Ali Hamza Ahmad  
7 Sulayman al Bahlul.

8  
9 The accused, the Presiding Officer, and all detailed  
10 counsel are present with the exception of Lieutenant  
11 [REDACTED] who has been excused for this session by the  
12 detailing authority.

13  
14 A court reporter has been detailed reporter for this  
15 Commission and has been previously sworn. Security  
16 personnel have been detailed for this Commission and  
17 have been previously sworn. Commission translators  
18 have been detailed for this Commission and have been  
19 previously sworn. Their curriculum vitae are in

1       Review Exhibits 131 and 132 which will be attached to  
2       the record.

3  
4   Presiding Officer: I've been designated as the Presiding  
5       Officer of this Military Commission by the Appointing  
6       Authority. I've been previously sworn.

7  
8       Before continuing on, let's talk about your need, Mr.  
9       al Bahlul for an interpreter.

10  
11       Are you able to understand and speak English, Mr. al  
12       Bahlul?

13  
14   ACC: Can you tell I have some things that I need to say  
15       before I answer this question?

16  
17   Presiding Officer: Mr. al Bahlul, before I go into  
18       anything else, I need to know if you need an  
19       interpreter.



1 ACC: Yes, I need an interpreter.

2

3 Presiding Officer: I note that there is a person seated at  
4 the table next to you.

5

6 Would you please tell me, sir, your name?

7

8 INT: [REDACTED]

9

10 Presiding Officer: Are you able, Mr. al Bahlul to  
11 understand the -- your interpreter's translation of  
12 English to Arabic?

13

14 ACC: Could you repeat the question?

15

16 Presiding Officer: You have an interpreter sitting next to  
17 you. When he speaks to you in Arabic, do you  
18 understand what he says?

19

20 ACC: Yes, I do.

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20

Presiding Officer: Okay.

Sir, have you been previously sworn?

INT: Yes, I have.

Presiding Officer: Thank you.

Prosecutor, please go through detailing and qualifications.

A.PROS2: Yes, sir.

All members of the prosecution have been detailed to this Military Commission by the Chief Prosecutor. All members of the prosecution are qualified under Military Commission Order Number 1, Paragraph 4(b) and have been previously sworn.

1 No member of the prosecution has acted in any manner  
2 which might tend to disqualify us in this proceeding.  
3 The detailing document has been marked as Review  
4 Exhibit 134. The prosecution also has seated at the  
5 prosecution table an assistant who will assist the  
6 prosecution, but will not represent the government.  
7

8 Presiding Officer: Mr. al Bahlul, in just a second you  
9 will be able to tell me what it was you wanted to  
10 tell me, but please wait until I tell you, you can  
11 tell me.  
12

13 Pursuant to Military Commission number -- Order  
14 Number 1, you are represented by your detailed  
15 defense counsel. He is provided to you at no expense  
16 to you. I note that Major Fleener is in the  
17 courtroom. I further note that he is not seated at  
18 the defense table, however he is before the bar. I  
19 note that he did not make a request of the Commission

1 to change the normal seating. However, we will go  
2 into that at a later time.

3  
4 Major Fleener, back there [indicating], detailed  
5 defense counsel.

6  
7 Okay, you understand that?

8  
9 ACC: I understood. However, I do not need to be  
10 represented.

11  
12 Presiding Officer: Okay. Mr. al Bahlul, please just  
13 listen to the specific question I ask. If we can go  
14 through this, then we can get to where you get to say  
15 what you want, but I am required to tell you certain  
16 things and then you get to say what you want.

17  
18 Do you understand that?  
19

1 ACC: I only answer to your question and I answer to your  
2 question precisely.

3  
4 Presiding Officer: Okay, then I will ask again. At this  
5 moment Major Fleener, the officer seated to your  
6 right rear with the Army green uniform on, is your  
7 detailed defense counsel and he is representing you.

8  
9 Do you understand that, at this moment?

10  
11 ACC: I understand that he has been forced on me.

12  
13 Presiding Officer: However you want to characterize it,  
14 Mr. al Bahlul. He is your detailed defense counsel.  
15 If the translators could turn up the volume in the  
16 courtroom so that I could hear what is coming out in  
17 English, I would appreciate it.

18  
19 Mr. al Bahlul, you may request a different military  
20 counsel to represent you. If the person you request

1 is reasonably available, she or he would be appointed  
2 to represent you free of charge. If you request a  
3 different military counsel and that lawyer is  
4 detailed, your current detailed counsel, Major  
5 Fleener, would normally be excused. However, he  
6 could remain on the request at the discretion of the  
7 Chief Defense Counsel if you ask for him to remain on  
8 the case.

9  
10 Do you understand that?

11  
12 ACC: Yes, I understand that.

13  
14 Presiding Officer: Thank you. In addition, you may be  
15 represented by a qualified civilian lawyer. A  
16 civilian lawyer would represent you at no expense to  
17 the United States government. That lawyer must be a  
18 United States citizen, admitted to practice in a  
19 state, district, territory or possession of the  
20 United States. They must not have been sanctioned or

1       disciplined for any misconduct. They must be  
2       eligible for a security clearance in the grade of  
3       secret, and they must agree in writing to comply with  
4       the orders, rules, and regulations of Military  
5       Commissions.

6  
7       Do you understand that?

8  
9   ACC: Yes.

10  
11   Presiding Officer: Thank you for turning up the sound.

12  
13       If a civilian lawyer represents you, your detailed  
14       defense counsel will continue to represent you as  
15       well, and this detailed defense counsel will be  
16       permitted to be present during the presentation of  
17       all evidence.

18  
19       Do you understand that?

1 ACC: Yes, I understand that.

2

3 Presiding Officer: Now we are about to get to where you  
4 are going to want to tell me something.

5

6 My next question, Mr. al Bahlul. Do you have any  
7 questions about your right to counsel before this  
8 Commission?

9

10 ACC: Regarding the defense counsel here present in the  
11 military uniform and this Military Commission and  
12 according to your laws of which I hear part of them  
13 from you today and I read some of it previously, but  
14 I was told that it changes from a minute to another.  
15 And I considered what you have just said are the last  
16 and most accurate laws. So, therefore, the defense  
17 counsel, what is called the defense counsel, since he  
18 was imposed on me; this means that you deny me the  
19 right to choose on a free basis a lawyer that I want  
20 myself. And since I am denied this right to appoint



1 a lawyer, I have the right to appoint my lawyer and I  
2 have the right to refuse your laws that you impose on  
3 me, the military laws that you impose on me. And if  
4 there is a civilian lawyer that is voluntary, I will  
5 not want that civilian lawyer.

6  
7 Presiding Officer: Excuse me for a second. I didn't  
8 understand. You said there is a civilian lawyer and  
9 I didn't quite catch what you said after there's a  
10 civilian lawyer. If you could please repeat that for  
11 the translator to repeat it.

12  
13 ACC: I will be clear. I said since I am denied the right  
14 to choose a lawyer that I appoint myself by writing  
15 or directly, a lawyer from anywhere I want -- I  
16 choose, I refuse for any military defense counsel to  
17 be imposed on me based on your military laws.

18  
19 And in addition, if there was a lawyer that imposed  
20 himself on a voluntary basis and if he was a civilian

1 lawyer, I would not accept the services of this  
2 lawyer because he is American. And that doesn't  
3 mean -- that doesn't mean that I hate all Americans.  
4 That means I hate or I'm the enemy of all Americans  
5 who fight. I did not say that I hate, but I say that  
6 I regard them as enemies -- because I heard the word  
7 hate and I would like to correct that.

8  
9 Presiding Officer: I have heard what you have said. I  
10 want to make sure that I understand what you said  
11 because I got to ask you if you understand what I  
12 said, so we'll go back the other way.

13  
14 I heard you say that you do not want to have a military  
15 lawyer imposed upon you; is that correct?

16  
17 ACC: Yes, that's correct. I do not wish for a military  
18 lawyer to be imposed on me.

1 Presiding Officer: Okay. The second thing I heard you say  
2 was that you do not want to have a civilian lawyer  
3 imposed upon you?  
4

5 ACC: What I said is let's suppose that a civilian lawyer  
6 imposed his services or volunteered -- volunteered,  
7 if a civilian lawyer volunteered and was not imposed  
8 on me, even in that case, I refuse the services.  
9

10 Presiding Officer: Okay. There. Now we understand what  
11 we are saying. I am going to take note that Mr. al  
12 Bahlul currently has a habeas corpus petition pending  
13 in the District Court for the District of Washington  
14 D.C..  
15

16 ACC: Do you mean, do I have a habeas corpus here in a  
17 military and civilian courts in the United States?  
18

19 Presiding Officer: There -- I am -- what I said was, "I am  
20 taking note." That means I know. That I am telling

1 everyone I know that at this moment there is a  
2 petition before the District Court for the District  
3 of Columbia in which lawyers have asked on your  
4 behalf, representing you that the Court do something.  
5 Those are - apparently - - I've just seen the  
6 documents; I've never met them -- those are  
7 apparently members of a bar of the state. The people  
8 that I've described in the civilian lawyer right. If  
9 one of them volunteered to represent you here, would  
10 you want one of those people to represent you?

11  
12 ACC: I heard the judge say that I have appointed voluntary  
13 a volunteer lawyers? I would like to tell the judge  
14 and the people present here that I never appointed  
15 any civilian lawyers, not directly, and not in  
16 writing. And I am surprised to hear that from you.  
17 This is not because -- I'm not surprised that some  
18 people volunteered their services. Many people would  
19 like to volunteer in this case just to get some fame.  
20 They ask for fame. They want fame for themselves and

1 I do not appoint anyone by writing or even by  
2 inference. Many Americans can do what they want.  
3 They can tell the world that they -- I have a lawyer  
4 and while I don't have a lawyer. And I'm stuck here  
5 and I don't know what is happening.

6  
7 Presiding Officer: Okay, please -- okay, Mr. al Bahlul you  
8 speak very rapidly as I do. However, they need to  
9 translate, so if I hold my hand up, all that means is  
10 please slow down so they can translate. The --  
11 Prosecutor, I want you to obtain from whatever  
12 sources the last two or three filings in the -- you  
13 don't have to stand up --

14  
15 This is a direction this is not a colloquy. The last  
16 two or three filings in the District Court -- I  
17 believe that the Chief Clerk of Military Commissions,  
18 Mr. Harvey, may have them. So that the record will  
19 show that I just wasn't making up that people were  
20 presenting themselves. And if you will make -- the

1 last two filings in the District Court on behalf of  
2 Mr. al Bahlul.

3  
4 Do you understand?

5  
6 PROS: Yes, sir. Just to make the record clear, there is a  
7 civil action filed in the United States District  
8 Court.

9  
10 Presiding Officer: Well, I understand. Just attach it.

11  
12 PROS: Attach it?

13  
14 Presiding Officer: Well, we'll -- bring it and show it.

15 We'll get it attached. That's all I want.

16  
17 PROS: We also -- I also have the names of the four lawyers  
18 that purport to represent him, sir.

19  
20 Presiding Officer: It will be on the bottom.

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2  
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20

PROS: Okay.

Presiding Officer: Okay. Okay now that we've got that out of the way. My now understanding is you don't want any civilian lawyer who is an American citizen no matter what, right?

ACC: I do not want the services of any volunteer civilian lawyer.

Presiding Officer: Okay. And further, you have told me that you don't want to ask -- listen, stop -- you don't want to ask for any lawyer?

ACC: Regarding any request, this is a good point that you brought up and I thank you for it. Regarding a request for a lawyer to represent me, in August of 2004, previously, I told the same judge in front of me today that if I'm allowed to have a lawyer from

1 Yemen, and I spoke of that during -- in that  
2 tribunal. It was me. And the judge told me that  
3 there were two points that he wanted to talk about  
4 with his supervisors so that he could receive an  
5 answer. And the court session ended on that basis.  
6

7 Presiding Officer: I was there and I remember. Okay. As  
8 I told you then and I'll tell you now, first of all  
9 the Military Commission order requires that you have  
10 a detailed counsel. A detailed military lawyer and  
11 that's Major Fleener. You have told me that you  
12 don't want him and I understand that, so there's no  
13 point discussing that for the moment.  
14

15 You told me, and this is all available in the  
16 transcript of the session in August of 2004, that you  
17 knew a Yemeni lawyer and if you could have a Yemeni  
18 lawyer that that Yemeni lawyer or some other Yemeni  
19 lawyer whom you trusted, you would want him. And I



1 told you at that time that the Military commission  
2 order forbade that.

3  
4 In the interim, there has been a lot of research done  
5 on this and the answer was received that those laws  
6 stay as they are. I can't change that. However, you  
7 then went on to tell me that not only did you not  
8 want a lawyer, you wanted to represent yourself.

9  
10 Is that still what you want?

11  
12 ACC: Regarding representation, we left the last meeting on  
13 the basis I understood that you were going to give me  
14 the answer regarding whether I will be allowed to  
15 represent myself or not. And as I was in my cell,  
16 Phillip Sundel came to me and brought me a series of  
17 documents and he said that the government decided  
18 that I was not allowed to represent myself. I did  
19 not consider that to be an official response because

1           the judge told me that he was going to give me the  
2           response.

3  
4   Presiding Officer:   And I am here today.

5  
6   ACC:   And I am waiting for your response.

7  
8   Presiding Officer:   You are going to get it, Mr. al Bahlul.

9  
10   ACC:   Thank you.

11  
12   Presiding Officer:   Okay.   Is it still your desire to  
13           represent yourself?

14  
15   ACC:   At the beginning of this session, I told the judge  
16           that I had some things that I needed to say and he  
17           told me that he was going to give me an opportunity  
18           later on to do so.   And I would like to say what I  
19           have to say before he gives me his answer -- before I  
20           give him the answer.

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19

Presiding Officer: Okay, Mr. al Bahlul I will now let you say what it is you want to say. However, I am telling you that I have to hear what you say and I have to understand what you say. And so, when you start talking very rapidly, I am not being, I am not able, they are not able to translate as fast. So if you will do it in very short bursts.

So now you -- I will tell you -- I will tell you right now if you will remember, you made a statement at the end of our last session and I stopped you from speaking. I'm not going to say what the statement was, but if you get into matters that in my opinion might be adverse to your position, be aware that I will probably stop you. So just so you know that. So now you can tell me what it is that you wanted to say.

1 ACC: It's not what the judge said here in the last  
2 session. It's not on the same style of declarations  
3 made by the judge.

4  
5 These are the causes and circumstances of the  
6 decision that I am taking right now. This has to  
7 deal with the question asked by the judge previously,  
8 just a few minutes ago, about whether I still want to  
9 represent myself.

10  
11 Is it possible for the judge to give an opportunity  
12 to read these causes and circumstances? Would the  
13 judge give me the opportunity to read these nine  
14 points?

15  
16 Presiding Officer: Mr. al Bahlul, as I just told you, I  
17 will give you the opportunity right now to say what  
18 it is you want to say. If you start on an area where  
19 I believe you are about to say something that could  
20 harm you, I may stop you. I have not seen you since

1 August of 2004. I do not know what you want to say.  
2 I am willing to listen, but I am not going to let you  
3 harm yourself in my courtroom if I can help it. With  
4 that said, tell me what you want to say.  
5

6 ACC: I want to thank the judge for what he just said now  
7 about not allowing me to harm myself in his court.  
8 And this is something very positive from the judge,  
9 but at the same time with all of my due respect to  
10 the judge, Presiding Officer, I need to know what he  
11 said -- he needs to know what I need to tell him.  
12 And if I speak about some points and the judge sees  
13 that they are harmful to me and since the judge is  
14 the one who directs this court and he knows  
15 everything about it, and if the judge raises his hand  
16 I will stop speaking.  
17

18 I will read slowly, bit-by-bit so the translation can  
19 be done. These nine points are the background of the  
20 causes and circumstances behind my decision which I

1 will take today in this court, and which will also be  
2 related to the next hearings and the next sessions,  
3 and up until the final judgment and even beyond that.  
4 For causes and circumstances including:  
5

6 First, because you are an enemy of the Nation of  
7 Muslims, you corrupt their religions and their life  
8 and you steal their wealth.  
9

10 Second, because of the great injustice that is  
11 carried out by your allies, the Jews on the Muslims  
12 in Palestine -- Muslims, Palestine. The occupied  
13 Palestine and your support and your help to them.  
14

15 Third, you are not the only ones who are persecuting  
16 me -- who are working against us. You are not the  
17 only ones who are taking us to court, to trial. You  
18 are not the ones who are prosecuting us. You are not  
19 the only ones prosecuting us, but us, we have also  
20 things that we can prosecute you for. And we have

1 rules and evidence and documents for it because we  
2 are prisoners of war and legal combatants based on  
3 our religion -- based on our religion, and our  
4 religious law, and it is not -- we do not care about  
5 anything -- about anything that you call us and any  
6 kind of feelings that are based on what you call us;  
7 prisoners or detainees or unlawful belligerents, or  
8 any other names that you give us based on your  
9 earthly laws and international earthly laws.

10  
11 Fifth, in an attempt by some of the investigators to  
12 draw the Yemeni government, to involve the Yemeni  
13 government in the USS Cole bombing; and Aden, where I  
14 personally was subjected to an intense questioning  
15 from the US intelligence in Kandahar regarding this  
16 issue. Also, what some have been subjected to. What  
17 the brother has been subjected to. Brother Zarhawi  
18 Hady -- of torture and investigations carried out in  
19 Jordan by Abu Rai, the investigator and his group in  
20 general. And regarding this point specifically, the

1 involvement of the Yemeni government in the USS Cole  
2 incident.

3  
4 Sixth, because of the secret evidence issue.

5  
6 Seven, because --

7  
8 Presiding Officer: I'm sorry. I hate to interrupt the  
9 flow. "Because of the secret evidence issue."

10 That's -- is that number, that's is number six. Is  
11 that correct? Is that correct, Mr. al Bahlul?

12  
13 ACC: Yes.

14  
15 Presiding Officer: Thank you. Go on to number seven. I  
16 apologize.

17  
18 ACC: Secret evidence.

19  
20 Presiding Officer: That's good.



1  
2 ACC: Seven, because of the racial discrimination based on  
3 nationality and the division of the world by the  
4 United States into a third -- consecutive third  
5 world. The U.S. government has declared previously  
6 that they were six people that were accused, two of  
7 them were British and they were not subjected to  
8 military trials because they -- or Britain refused  
9 that anyone carrying the British citizenship is  
10 subjected to this trial even if he was Muslim to not  
11 be subjected to this military trial. Even though it  
12 is an illegal military trial.

13  
14 Eight, denying me the right of free choice of a non  
15 U.S. lawyer and a noncombatant lawyer, a mutual  
16 lawyer.

17  
18 Nine, the bailiff and the investigator, the person  
19 who whips -- the whipper. Whether it is somebody who  
20 whips directly or indirectly, a man who carries out

1       torture -- and the defense counsel and the  
2       prosecutor, the judge, all of them are Americans. So  
3       how can there be a tribunal, a court, a complete  
4       court, and a fair court as long as they do not --  
5       when they do not accept our rules, our laws. And we  
6       are not going to accept their rules and their laws.

7  
8       I know that I am detained in their hands and they  
9       will implement their laws as they wish. So between  
10      us and them, there is going to be the tribunal of God  
11      on the day of judgments.

12  
13      And therefore, I am telling the judge do what you  
14      have to do and rule however you have to rule. This  
15      life will go on and will be gone at one point.  
16      Because you are going to be ruling in this life, this  
17      earth, and God will rule based on justice. And those  
18      who call upon other than God are not calling about  
19      anything.

1 Allah is all hearer, all seer.

2  
3 These nine causes -- with these nine causes, I am --  
4 I am boycotting all sessions even if I am forced to  
5 be present and if -- or if I am pulled away. If the  
6 judge considers this a bad behavior by the accused, I  
7 will raise this [indicating] paper and this word is--

8  
9 [Accused speaking English]

10  
11 "boycott." I am boycotting every session. I am  
12 boycotting every session.

13  
14 [Accused raising indicated sign, turning to  
15 spectators.]

16  
17 This is -- this boycott is the result of a rejection  
18 and objection of and causes and circumstances that I  
19 am convinced of and I believe, and it doesn't matter  
20 to me if you believe these -- the same things or not.

1  
2 And therefore, there is an objection - -

3  
4 [Accused speaking English]

5  
6 --a boycott - - Boycott -- Boycott.

7  
8 And I would like to just for -- just to be polite to  
9 keep this headset and not say a word. Thank you.

10  
11 Presiding Officer: Mr. Bahlul, before you fold up that  
12 document, could I get the bailiff to take it and make  
13 a copy so I can put into the record what is was you  
14 held up?

15  
16 Bailiff you will -- let the record reflect the  
17 bailiff is retrieving -- just -- just -- no. Just  
18 the front part of the document, Mr. al Bahlul. Just  
19 let me do my part first.  
20

1 ACC: You can make a copy of this document that says,  
2 "boycott" and it will also include my signature. I  
3 am signing it now in front of everyone present here.  
4

5 Presiding Officer: Fine. The bailiff will take it.  
6

7 ACC: And I am writing it out in English as well. The word  
8 "boycott." And this is my signature. Today is the  
9 11th of January 2006, eleventh of the Hijri month of  
10 the 12th month 1426 Hijri calendar. And the -- one  
11 of the coincidences is that the 9/11 is the same 9/11  
12 in this Hijri calendar and the Gregorian calendar.  
13 And the same also -- the dates of my session here is  
14 also the same date in -- according to the Hijri  
15 calendar.  
16

17 I thank you and -  
18

19 [The Accused speaking English.] Boycott--I am  
20 boycotting.

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19

Presiding Officer: Let the record reflect that the bailiff has retrieved a one-half page of paper which he will take and make a copy. He will return the original to Mr. al Bahlul. He will provide the copy to the court reporter who will mark it at whatever RE will be up to by then.

Thank you bailiff.

Mr. al Bahlul, please, before you boycott, can I ask you a couple more things?

Okay.

[The Accused raised his hands in a blocking motion, then clasped his hands over his breast, and nodded to the Presiding Officer.]

1 Presiding Officer: After that last question, Mr. al Bahlul  
2 put his hands in front of his face and made an  
3 indication which to the Presiding Officer indicated  
4 that he was not going to say anything or do anything.  
5

6 He further removed the headsets -- the headset --  
7 procured I might mention at great cost to me to get  
8 it in here, from his head and apparently is now only  
9 listening to the English speaking that I'm doing.  
10

11 Before we proceed, I am going to take a -- you need  
12 ten minutes to get him down the hall?  
13

14 Okay I am going to take ten minutes to a -- for a  
15 short recess and we will come back in.  
16

17 [The commission hearing recessed at 1119, 11  
18 January 2006.  
19

1 The commission hearing was called to order at 1132,  
2 11 January 2006.]

3  
4 Presiding Officer: The commission will come to order. Let  
5 the record reflect all parties present when the  
6 commission recessed are once again present in the  
7 courtroom.

8  
9 During that last recess, the bailiff handed the  
10 boycott sign to the court reporter who has marked it  
11 as RE-135.

12  
13 Bailiff, did you hand the original back to the Mr. al  
14 Bahlul?

15  
16 BAI: Yes, I did, sir.

17  
18 Presiding Officer: Okay. He says he did in case y'all  
19 couldn't hear that. The court obtained and provided  
20 to the court reporter the District -- one of the



1 district court filings to which I referred. And it  
2 has been marked as RE-136.  
3

4 A.PROS2: Excuse me, Mr. Presiding Officer. The  
5 translators have the ability to broadcast the English  
6 to Arabic translation into the court. Would you like  
7 them to do that?  
8

9 Presiding Officer: Nope. The court has provided Mr. al  
10 Bahlul a set of headphones in which he will get  
11 translations from English to Arabic. Mr. al Bahlul  
12 referring back to the transcript of the August 2004  
13 session is approximately 37 or 38 years old and he  
14 had then 16 years of formal education. Mr. al Bahlul  
15 has made a choice not to listen to the proceedings  
16 through the headset. The headset I note is on the  
17 desk in front of him. If he wishes to pick them up,  
18 Mr. al Bahlul may make that choice. I am not going  
19 to force that choice on him, okay?  
20

1 A.PROS2: Yes, sir.

2

3 Presiding Officer: As Mr. al Bahlul stated in his earlier  
4 comments when we met in August 2004, I told him that  
5 I would give him an answer on his request to go pro  
6 se. I am now going to give the answer on his request  
7 to go pro se. This will be reduced to writing and  
8 appended to the record as an RE at a later time.  
9 There are two separate, distinct, and independent  
10 reasons for my ruling.

11

12 The first separate, distinct, and independent reason  
13 for my ruling, I will make further particularized  
14 findings later as I stated, but it is that Mr. al  
15 Bahlul is not competent to go pro se because he has  
16 stated on the record in open court that he is  
17 boycotting the proceedings and that he will not  
18 participate in the proceedings. Obviously a person  
19 who will not participate in the proceedings cannot  
20 represent himself. Consequently along with other

1 particularized findings which I will append to the  
2 record, he would not be competent to go pro se.  
3

4 Second separate, distinct, and independent reason is  
5 that the Presidential Military Order, the Military  
6 Commission Order Number 1 and Military Commission  
7 Instruction Number 4 require that Mr. al Bahlul be  
8 represented by detailed counsel at all times.  
9

10 My ruling, therefore, is that Mr. al Bahlul may not  
11 go pro se.  
12

13 PROS: Mr. Presiding Officer. If I may suggest a third  
14 grounds to append to your ruling. He also stated  
15 that he was not going to accept our rules and our  
16 laws which of course is something that you would have  
17 to accept at any court or any proceeding in order to  
18 represent yourself such as he stated that he would  
19 not.  
20

1 Presiding Officer: I will prepare a draft ruling and  
2 provide it to counsel for both sides and if they want  
3 to expand upon my rulings or suggest something else,  
4 they may. But I am satisfied right now with my two  
5 reasons.

6  
7 Major Fleener, please move up to the counsel table.

8  
9 [Major Fleener did as directed.]

10  
11 DC: Sir, is this an order; should I consider it an order?

12  
13 Presiding Officer: Do you need an order, Major Fleener?

14  
15 DC: I believe I do, sir. And I am not trying to be  
16 belligerent.

17  
18 Presiding Officer: And I just said, "Do you need an  
19 order?"

20

1 DC: Yes, Your Honor.

2

3 Presiding Officer: Okay. Major Fleener, move to the  
4 counsel table.

5

6 Major Fleener did as directed.

7

8 Presiding Officer: Please announce your detailing and  
9 qualifications.

10

11 DC: I've been detailed to this Military Commission by the  
12 Chief Defense Counsel. I am qualified under Military  
13 Commission Order Number 1, Paragraph 4C and I have  
14 been previously sworn. I have not acted in any  
15 manner that might tend to disqualify me in this  
16 proceeding. I believe the document detailing me has  
17 been marked as a Review Exhibit.

18

19 Your Honor, at this point I move to withdraw.

20

1 If I may, sir --

2  
3 The Presiding officer held up his hand.

4  
5 DC: Yes, sir.

6  
7 Presiding Officer: Bailiff, if you will go to Mr. Hodges  
8 and get a copy of the detailing document, please, for  
9 Major Fleener.

10  
11 Bailiff did as directed.

12  
13 Presiding Officer: Okay, Major Fleener you are up. Tell  
14 me why you move to withdraw.

15  
16 DC: I have been asked to withdraw by Mr. al Bahlul. He  
17 doesn't want my representation and I believe Rule 1  
18 Point 16 requires me to move to withdraw in that  
19 situation and I therefore do so. And I believe it  
20 would be prudent --

1

2 Presiding Officer: Can you speak -- can you push the mic  
3 up so everyone can hear what you are saying.

4

5 [Defense counsel did as directed.]

6

7 Presiding Officer: Okay. Go on.

8

9 DC: I believe it would be prudent. I have a -- I  
10 understand that there is an opinion from the Army  
11 Standards of Conduct office on this issue.

12

13 Presiding Officer: Please speak up. Really.

14

15 DC: I understand that there is a Standards of Conduct  
16 Opinion on this issue from the Army. I also do note  
17 that I have requested guidance from the bar of Iowa  
18 and I will be requesting guidance I am in the process  
19 of figuring how to request guidance from the bar of  
20 Wyoming regarding the continued -- my continued

1 participation in this case. And I would ask that  
2 before the Court places me in a position where I may  
3 be violating my rules of professional conduct that we  
4 wait to hear what the state licensing authorities  
5 have to say, sir.

6  
7 Presiding Officer: Let the record reflect I'm handing the  
8 court reporter the detailing document, dated, 3  
9 November 2005, which will be marked as the next  
10 review exhibit in line.

11  
12 [Reporter marked exhibit.]

13  
14 Presiding Officer: That document is RE-137.

15  
16 Okay, Major Fleener, you and I have talked briefly,  
17 but let's put this on the record.

18  
19 You are not -- a mere three months ago you were not  
20 in the Army, correct?



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DC: I was in the Army Reserve, sir.

Presiding Officer: You were serving as a --

DC: I was an Assistant Federal Defender in Cheyenne,  
Wyoming.

Presiding Officer: Okay. You were recalled for active  
duty, were you ordered to active duty or how did you  
get here?

ACC: I believe I was ordered to active duty. I was  
mobilized, sir.

Presiding Officer: You had no choice as an involuntary  
recall?

1 DC: I don't know whether it was an involuntary recall or  
2 not. It was -- most Army reservist are being  
3 activated and it's always sort of quasi-voluntary.

4  
5 Presiding Officer: Okay. When did you learn that you were  
6 going to be recalled for this?

7  
8 DC: I believe -- and I'm -- I don't know for sure. I  
9 believe somewhere around the middle part of  
10 September, sir.

11  
12 Presiding Officer: Of 2005?

13  
14 DC: Yes, sir.

15  
16 Presiding Officer: Okay. When you were recalled, I  
17 presume -- okay, the court will take note that  
18 Colonel Sullivan is the Chief Defense Counsel. Did  
19 you talk to him before you were recalled?

1 DC: We spoke about me coming on yes, sir.

2

3 Presiding Officer: When did you first learn that you were  
4 going to be representing Mr. al Bahlul -- that you  
5 were going to be detailed as that document shows to  
6 be representing Mr. al Bahlul?

7

8 DC: I received formal notification of the detailing on  
9 November 3rd, sir.

10

11 Presiding Officer: You didn't know it before then?

12

13 DC: That I was going to be detailed?

14

15 Presiding Officer: Yes.

16

17 DC: I suspected I was going to be detailed on this case,  
18 Your Honor, earlier.

19

1 Presiding Officer: Before you were recalled, did you know  
2 about -- I mean, had you done the standard lawyer  
3 stuff? Okay, I am going to work to commissions so  
4 I'm going to look at the commission order and the PMO  
5 and the MCI and stuff like that?

6  
7 DC: No, Your Honor. I had a full case load I was trying  
8 to close.

9  
10 Presiding Officer: Okay. You are a member of the bars of  
11 Iowa and Wyoming, correct?

12  
13 DC: I am.

14  
15 Presiding Officer: Okay. Review Exhibit 128 is a request  
16 you made to the Iowa bar for an opinion dated, what,  
17 3 January of 06 and then on the -- on RE-130 is a  
18 request you made to SOCO, that's the Army -- US Army  
19 Standard of Conduct Office dated, 4 January. When

1        did you first learn that Mr. al Bahlul had refused to  
2        meet with prior counsel?

3  
4    DC:    Probably -- probably around the first of September,  
5        sir, I imagine.    That's give or take a couple of  
6        weeks either way, sir.

7  
8    Presiding Officer:    I did not detail you to this case,  
9        Colonel Sullivan detailed you to this case.    Did you  
10       request to -- did you submit a request to withdraw to  
11       Colonel Sullivan?

12  
13    DC:    I did.

14  
15    Presiding Officer:    When was that?

16  
17    DC:    I submitted a request back in December.    I didn't  
18        hear an answer.    I then submitted a request in  
19        January.    There was a question whether it was a  
20        request to withdraw because I didn't believe I had

1       established an attorney/client relationship therefore  
2       need no reason to withdraw or whether it was a  
3       request to be relieved from those particular duties,  
4       so I resubmitted my requests. I -- both requests  
5       were denied orally by Colonel Sullivan.

6  
7   Presiding Officer: Okay. So you have not received a  
8       written response, but he has orally denied your  
9       request to withdraw from whatever it was that you  
10      were doing or not doing.

11  
12   DC: Yes, Your Honor.

13  
14   Presiding Officer: Okay. Please after this session  
15      provide the parties with copies of your request so  
16      they can be appended -- to Colonel Sullivan.

17  
18   DC: I may not have the original document with me --  
19

1 Presiding Officer: That's all right. Copies. Copies are  
2 fine.

3

4 DC: Yes, sir.

5

6 Presiding Officer: Other than this morning, have you ever  
7 met with Mr. al Bahlul?

8

9 DC: I have not.

10

11 Presiding Officer: Today was the first time?

12

13 DC: It was, sir.

14

15 Presiding Officer: Okay. Have you ever tried to meet with  
16 him before today?

17

18 DC: It depends on what, Your Honor, means by the word

19 "tried." And I'm not trying to be snide. My

20 instructions were that Mr. al Bahlul did not want to

1 meet with me. I believed those instructions and I  
2 believed that those were Mr. al Bahlul's wishes, so I  
3 did not go to the camp to meet Mr. al Bahlul.  
4

5 Presiding Officer: Okay. I am confused why you didn't  
6 seek an ethical opinion from your state bar -- either  
7 of your state bars prior to 3 January. As you know I  
8 sent a request to SOCO which is Review Exhibit 119 on  
9 the 6th of December and I received a response from  
10 that -- to that request fairly rapidly within a  
11 month. Why did you take so long to ask the state  
12 bars? Have you asked Wyoming yet?  
13

14 DC: There is no -- No I have not. There is no formal  
15 mechanism in place to ask Wyoming and that's one of  
16 the things I am working on to try to get this issue  
17 answered by somebody. And I can -- I can speak to --  
18 to both states and why it has taken me so long to  
19 submit my request. As far as Iowa goes -- and I  
20 don't mean any disrespect, Your Honor. I saw your



1 request to the Standards of Conduct Office. I sought  
2 the advice of my own attorneys and I think it took me  
3 a while -- it took us a while to get the questions in  
4 place that we thought at the time were the relevant  
5 questions which may not be the relevant question now  
6 after today's proceedings.

7  
8 Presiding Officer: There's that, Major Fleener. There  
9 sure is that.

10  
11 DC: Yes, sir. The second -- and I -- as everyone is  
12 busy. I've been on this case for two months. I've  
13 had one trip to Cuba. I actually -- as, Your Honor,  
14 knows I was detailed onto a court-martial. I'm the  
15 only person in the courtroom that's actually had a  
16 trial in the last several months. I had a trial in  
17 December Fort Sill, Oklahoma. And I -- to be quite  
18 frank, I've been working very very hard trying to  
19 understand what my obligations are, but every move I

1       make has to be well thought out and at least  
2       deliberative. I'm doing my best.

3  
4   Presiding Officer: That's why we are here, Major Fleener.

5       Okay --

6  
7   DC: I spoke with state of Iowa yesterday because I knew  
8       Your Honor's question might come up. They expect to  
9       have an opinion within 30 days to the question that  
10      was asked. I intend to go -- I have a meeting with  
11      some folks in Wyoming over the phone to try to figure  
12      out a way to get this thing to a decision maker up  
13      there tomorrow and I hope to have the ball rolling on  
14      that as well. That is, of course, the issue may be  
15      different and I need to -- I need to analyze the  
16      issue so I haven't been dilatory, sir, I've been  
17      doing the best I can.

18  
19   Presiding Officer: You said "dilatory" not me, Major  
20      Fleener.

1

2 DC: I know, sir.

3

4 Presiding Officer: When I say that, you'll know it.

5

6 DC: Yes, sir.

7

8 Presiding Officer: Major Fleener, although you've asked me

9 to -- you've requested that I let you withdraw. You

10 are well aware of the President's Military Order MCO

11 1 and MCI 4 and are well aware after reading those as

12 an attorney that the President and the Secretary have

13 directed that there be representation at all times.

14

15 DC: Yes, sir. I'm certainly aware of that.

16

17 Presiding Officer: Okay. I do not grant your request to

18 withdraw. If Colonel Sullivan details another

19 counsel, we might have a different situation, but

20 Colonel Sullivan has not detailed another counsel.

1       You are de facto and de jure, the only counsel that  
2       Mr. al Bahlul has. And as he pointed out earlier,  
3       it's him against the United States. You are the only  
4       one on his side. I understand your concerns.  
5

6       However, referring -- I don't believe I mention  
7       RE-129 is the SOCO opinion which -- to which Major  
8       Fleener and myself have been referring and the --  
9       Major Fleener's request to the Iowa bar is RE-128.  
10      Referring to the opinion, your request for opinion, I  
11      note that you might at this time consider it does not  
12      reflect the state of affairs that we have now. In  
13      that, you state in there that there have been no  
14      particularized findings. I would suggest that any  
15      opinion that you receive from Iowa based solely upon  
16      that statement would not be one that would reflect  
17      the true situation.  
18

19      Go on.  
20

1 DC: And I would -- I don't necessarily agree with the  
2 Court but I certainly understand your position. I  
3 would note and this was a very difficult situation  
4 based on lots of things, that I believe Mr. al Bahlul  
5 decision to not want to take part in these  
6 proceedings were based in fact, because he thought  
7 you had denied his right to represent himself, and  
8 that his decision to boycott may very well not have  
9 been made had, Your Honor, granted him that right.  
10 And I would ask that if before, Your Honor, denies my  
11 request to withdraw and rule -- and decides that this  
12 was a specific finding, that there be a recess in  
13 place either later today or until tomorrow where I  
14 can explain that to Mr. al Bahlul. Because I believe  
15 that if -- if his -- I believe his boycott was based  
16 in fact on your -- his belief that, Your Honor, had  
17 denied his request to self-represent. I was unable  
18 to advise him of anything because I couldn't sit at  
19 the table because he asked me not to. But there may  
20 have been a very different answer had or a very

1 different response had that information been relayed.  
2 Had you spoken first before he spoke, we may not be  
3 in this situation. And before a person's right to  
4 self-represent and have an attorney forced on him and  
5 a situation like this is taken away, I would request  
6 at least a day to reflect and hopefully speak to Mr.  
7 al Bahlul about the situation.  
8

9 Presiding Officer: Okay. So there's no question. You  
10 don't have to worry about me ruling on your request.  
11 I've already done that. It's been denied.  
12

13 DC: Okay.  
14

15 Presiding Officer: You may not withdraw. You are not  
16 withdrawing. You are his detailed counsel and you  
17 are representing him. Okay, so there's no question  
18 about that. I made my ruling on pro se and you heard  
19 it. There were two, what were the words I used,  
20 separate, distinct, and independent reasons for my

1 ruling. And I will append particularized reasons to  
2 the record. Therefore, I am not willing to go back  
3 and reconsider anything -- now -- now that's not  
4 true. I'll reconsider lots of stuff, but I'm not  
5 going to hold off doing now things that I might  
6 need -- that I need to get going. Go on. Go on.  
7 I'm listening.

8  
9 DC: Okay. One of the rulings, one of the reasons that  
10 you gave was if I'm not mistaken, I didn't write them  
11 down, but one of the ruling, one of the reasons you  
12 gave was Mr. al Bahlul's apparent boycott of the  
13 proceeding.

14  
15 Presiding Officer: Apparent?

16  
17 DC: Yes, sir. The other -- the other ruling was on fact  
18 or on point with my request which was if the rules  
19 don't allow for it and that we -- because the rules  
20 don't allow for it, we -- you have to have a lawyer

1 and you can't represent yourself. I believe number  
2 one could have been cured the first reason could have  
3 been cured where if you were to deny him it would be  
4 based on number two which would be on point with my  
5 request of Iowa and my request to the Standard of  
6 Conduct Office.

7  
8 Presiding Officer: Well I will get with the Chief Clerk of  
9 Military Commissions and you can and when you send  
10 your appendix to the State bar of Iowa or if you  
11 don't, I'll have him do it. He will append the  
12 August 2004 transcript, the transcript of today's  
13 session and if that helps them in their consideration  
14 they can be helped. But we are where we are now and  
15 you are now and have been representing Mr. al Bahlul.  
16 That does not mean, Major Fleener, that I am going to  
17 order you to start trial today, but you have now got  
18 the order you want from a tribunal and we are going  
19 to proceed.



1 Any questions?

2

3 DC: I'd like to place one thing on the record, sir.

4

5 Presiding Officer: Sure. You can place anything you want  
6 on the record.

7

8 DC: Yes, Your Honor. I'd like the record to reflect that  
9 the August 2004 transcripts where Mr. al Bahlul said  
10 he wanted to represent himself that Mr. al Bahlul  
11 believed you denied that before he spoke today. And  
12 that his boycott of these proceedings, I believe,  
13 were in great part on the belief that you had already  
14 denied the right to self-represent which you hadn't  
15 done already. And that I would -- I would request  
16 that the hearing be reopened, his right of counsel  
17 inquiry, at a later date.

18

1 Presiding Officer: You are representing him. If you want  
2 to make some request at a later date I'll think about  
3 it. That's all I can say. Okay.  
4

5 PROS: Mr. Presiding Officer, I'm confused now. Is he  
6 going to be representing him or are we going to have  
7 to wait until he gets these ethics?  
8

9 Presiding Officer: Pardon?  
10

11 PROS: Is he going to actively represent his client or are  
12 we going to have to wait until he gets his ethics  
13 opinions from his state bar? My understanding of the  
14 Army one is they've already said that it's ethical  
15 for him to go forward under Rule 1 point 19.  
16

17 Presiding Officer: Okay. Go on. You are up, what do you  
18 want to say?  
19

1 DC: Your Honor, the Army's opinion didn't say that. The  
2 Army's opinion said, yes you can make somebody  
3 represent somebody and then it provided a great  
4 warning to the Court saying; however, if there is --  
5 a lawyer can't force an attorney or shouldn't force  
6 an attorney to do something which he believes is  
7 unethical if you are serving as a judge.

8  
9 Presiding Officer: Something that is unethical?

10  
11 DC: Right.

12  
13 Presiding Officer: Okay.

14  
15 DC: Your Honor, recognize that there was some issue out  
16 there because you requested from the Standard of  
17 Conduct Office yourself that there was an opinion.

18  
19 Presiding Officer: You're right, I did.

1 PROS: In response to you raising the issue --

2

3 Presiding Officer: Now, okay, please.

4

5 DC: The -- I would also point out that the instruction  
6 the appointing authority's instruction --

7

8 Presiding Officer: The what?

9

10 DC: There actually is an appointing instruction. I was  
11 shocked myself, but there's an appointing order  
12 instruction that says when there is a conflict that  
13 the legal advisor for the appointing authority shall  
14 seek the advice of the Standards of Conduct Office  
15 from the service of the attorney. That hasn't been  
16 done yet in this case.

17

18 Presiding Officer: I have -- so there's no question. I  
19 thought I didn't -- I thought there wasn't any  
20 question, but apparently there is, trial or

1 prosecution, excuse me. Major Fleener was detailed.  
2 His duties are explained in MCI 4. He has asked to  
3 withdraw. I have denied that request to withdraw and  
4 he is now representing Mr. al Bahlul.  
5

6 PROS: Sir, since 3 November of this year he has been  
7 detailed to represent Mr. al Bahlul. He has  
8 steadfastly refused to take any steps toward moving  
9 this commission process along. So the fact that he  
10 is now told that again that he is representing Mr. al  
11 Bahlul doesn't necessarily say that he's going to --  
12 whether or not he's going to continue to move forward  
13 or whether he's just going to sit on his hands.  
14

15 Presiding Officer: Luckily, Colonel, you've got me now.  
16

17 PROS: Thank you, sir.  
18

1 Presiding Officer: Okay. All personnel appear to have the  
2 requisite qualification, and all personnel required  
3 to be sworn have been sworn.

4  
5 The charge sheet is marked as RE-103 and will be  
6 attached to the record.

7  
8 Have you previously been provided a copy of the  
9 charges?

10  
11 DC: I have, Your Honor.

12  
13 Presiding Officer: Okay.

14  
15 DC: Since I represent Mr. al Bahlul, I move that you  
16 abate the proceeding to the legal advisor for the  
17 appointing authority goes to the Standards of Conduct  
18 Office for the Department of Defense consistent with  
19 the appointing authority instruction and seeks an --  
20 ethics.

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Presiding Officer: Okay, that motion to abate is denied.

However, you have full authority to write the appoint  
the Legal Advisor to the Appointing Authority.

DC: Does, Your Honor, not believe that you have to --  
that the Appointing Authority has this obligation to  
do that and that the proceedings can't go forward  
until the Legal Advisor for the Appointing Authority  
seeks that opinion?

Presiding Officer: What do you mean?

DC: Well the instruction that I read was fairly clear  
that when there's a --

Presiding Officer: Okay. Do you have the instruction?

DC: I don't have the instruction with me.

1 Presiding Officer: Okay. I am not going to make a ruling  
2 based upon an instruction that I do not have and have  
3 not seen. I have sought advice from the standards of  
4 conduct personnel who govern you and me as Army  
5 lawyers. You have read that. I have read that. If  
6 Iowa or Wyoming comes back based upon a factually and  
7 legally correct opinion request, then we may  
8 reconsider this. At this time, I have no reason to  
9 abate. And I am not going to abate.

10  
11 DC: Is, Your Honor, speaking for the Appointing Authority  
12 on this issue? I mean you -- you requested the  
13 opinion not the Appointing Authority. Does that --  
14 is your request go to the -- should be imputed to the  
15 appointing authority?

16  
17 Presiding Officer: Okay. Major Fleener, you are sitting  
18 there with no -- with nothing to refer to me. If you  
19 wanted to refer something to me, you could have done  
20 it. You didn't do it. If you want to furnish me



1 something later, you may. If I need to change a  
2 ruling later, I will. I am not going to make an  
3 abatement based upon some matter that has not yet  
4 been shown to the Court.

5  
6 DC: Are the instructions present in the court?

7  
8 Presiding Officer: Major Fleener, sit down. Please sit  
9 down. Okay. Just sit down.

10  
11 Counsel did as directed.

12  
13 Presiding Officer: There is no question. I am not going  
14 to abate it. You've got this entire afternoon.  
15 You've got tomorrow. We'll sit here until whenever  
16 you can find whatever document it is and provide it  
17 to myself and other parties to the Court. I don't  
18 know what you are talking about. I haven't seen it  
19 and if you show it to me then perhaps we'll have a

1 different matter. Please announce the general nature  
2 of the charges.  
3

4 A.PROS2: Sir, the general nature of the Charge in this  
5 case is a conspiracy to attack civilians, to attack  
6 civilian objects, to commit murder by an unprivileged  
7 belligerent, to commit destruction of property by an  
8 unprivileged belligerent and to commit acts of  
9 terrorism.  
10

11 Presiding Officer: Does either party want the charges read  
12 in open court?  
13

14 A.PROS2: Sir, the prosecution does not want the charges  
15 read.  
16

17 DC: I object to being forced to make decisions before --  
18 just for the record I --  
19

1 Presiding Officer: Okay. That's a standing objection.

2 Every time you stand up you don't have to say that,  
3 okay?

4

5 DC: Then I ask the charges be read.

6

7 Presiding Officer: Fine. Read the charges.

8

9 A.PROS2: Yes, sir.

10

11 The United States of America versus Ali Hamza Ahamad  
12 Sulayman al Bahlul, also known as Ali Hamza Ahmed  
13 Suleiman al Bahlul, also known as Abu Anas al Makki,  
14 also known as Abu Anas al Yemeni, also known as  
15 Mohammad Anas Abdullah Khalidi.

16

17 Ali Hamza Ahmad Sulayman al Bahlul is a person  
18 subject to trial by Military Commission. At all  
19 times material to the charge:

20

1 Jurisdiction for this Military Commission is based  
2 upon the President's determination of July 3, 2003  
3 that Ali Hamza Ahmad Sulayman al Bahlul is subject to  
4 his military order of November 13, 2001.

5  
6 That al Bahlul's charged conduct is triable by a  
7 military commission.

8  
9 General allegations:

10  
11 Al Qaida ("the Base"), was founded by Usama Bin Laden  
12 and others in or about 1989 for the purpose of  
13 opposing certain governments and officials with force  
14 and violence.

15  
16 Usama bin Laden is recognized as the emir (prince of  
17 leader) of al Qaida.

18  
19 The purpose or goal of al Qaida is stated by Usama  
20 bin Laden and other Al Qaida leaders is to support

1 violent attacks against property and nationals, (both  
2 military and civilian) of the United States and other  
3 countries for the purposes of, inter alia, forcing  
4 the United States to withdraw its forces from the  
5 Arabian Peninsula and in retaliation for United  
6 States support of Israel.

7  
8 Al Qaida operations and activities are directed by a  
9 shura a (consultation) council composed of  
10 committees, including the: Political committee; the  
11 military committee; the security committee; the  
12 finance committee; the media committee; and the  
13 religious/legal committee.

14  
15 Between 1989 and 2001, al Qaida established training  
16 camps, guest houses, and business operations in  
17 Afghanistan, Pakistan, and other countries for the  
18 purpose of supporting violent attacks against  
19 property and nationals (both military and civilian)  
20 of the United states and other countries.

1  
2 In August 1996, Usama bin Laden issued a public  
3 "Declaration of Jihad Against the Americans," in  
4 which he called for the murder of U.S. military  
5 personnel serving on the Arabian Peninsula.  
6

7 In February of 1998, Usama bin Laden, Ayman al  
8 Zawahari and others under the banner of  
9 "International Islamic Front for Jihad on the Jews  
10 and Crusaders," issued a fatwa (a purported religious  
11 ruling) requiring all Muslims to obey to do so to  
12 kill Americans - whether civilian or military -  
13 anywhere they can be found and to "plunder their  
14 money."  
15

16 On or about May 29, 1998, Usama bin Laden issued a  
17 statement entitled "The Nuclear Bomb of Islam," under  
18 the banner of the "International Islamic Front for  
19 Fighting Jews and Crusaders," which he stated that

1 "it is the duty of the Muslims to prepare as much  
2 force as possible to terrorize the enemies of God."  
3

4 Since 1989, members and associates of al Qaida, known  
5 and unknown, have carried out numerous terrorist  
6 attacks, including, but not limited to: The attacks  
7 against the American Embassies in Kenya, and  
8 Tanzania, in August 1998; the attacks against the USS  
9 Cole in 2000; and the attacks on the United States on  
10 September 11, 2001.  
11

12 Charge: Conspiracy:  
13

14 Ali Hamza Ahmad Sulayman al Bahlul, (also known as  
15 Ali Hamza Ahmed Suleiman al Bahlul with a different  
16 spelling, also known as Abu Anas al Makki, also known  
17 as Abu Anas al Yemeni, also known as Mohammad Anas  
18 Abdullah Khalidi, and hereinafter "al Bahlul"), in  
19 Afghanistan, Pakistan, Yemen and other countries,  
20 from on or about February 1999 to on or about

1 December 2001, willfully and knowingly joined an  
2 enterprise of persons who shared a common criminal  
3 purpose and conspired and agreed with Usama bin  
4 Laden, Saif al Adel, Dr. Ayman al Zawahari also known  
5 as ("the Doctor"), Muhammad Atef (also known as Abu  
6 Hafs al Masri), Salem Ahmed Salem Hamdan (also known  
7 as Saqr al Jadawi) and other members and associates  
8 of the al Qaida organization, known and unknown, to  
9 commit the following offenses triable by military  
10 commission:

11  
12 Attacking civilians; attacking civilian objects;  
13 murder by an unprivileged belligerent; destruction of  
14 property by an unprivileged belligerent; and  
15 terrorism.

16  
17 In furtherance of this enterprise and conspiracy, al  
18 Bahlul and other members or associates of al Qaida  
19 committed the following overt acts:  
20



1 In 1999, with the knowledge of Usama bin Laden's 1996  
2 "Declaration of Jihad Against the Americans: and the  
3 1998 fatwa endorsed by bin Laden calling for the  
4 "killing of Americans and their allies, both military  
5 and civilian," al Bahlul voluntarily traveled from  
6 Yemen to Afghanistan (via Pakistan) with the intent  
7 and purpose of joining and supporting Usama bin Laden  
8 in his expressed cause.

9  
10 In 1999, upon arriving in Afghanistan, al Bahlul met  
11 Saif al Adel, the head of the al Qaida Security  
12 Committee.

13  
14 Based upon arrangements made by Saif al Adel, al  
15 Bahlul participated in military training for two  
16 months at the al Qaida-sponsored Aynak camp in  
17 Afghanistan.

18  
19 After completing his training at Aynak camp, al  
20 Bahlul met with and pledged bayat to Usama bin Laden.

1 By pledging bayat, al Bahlul affirmed his willingness  
2 to perform any act requested by bin Laden and to  
3 protect bin Laden from all harm.  
4

5 In late 1989, after completing his training at Aynak  
6 camp, al Bahlul lived at an al Qaida-sponsored guest  
7 house in Kandahar and performed duties in support of  
8 al Qaida.  
9

10 From late 1999 through December 2001, al Bahlul was  
11 personally assigned by Usama bin Laden to work in the  
12 al Qaida media office. In this capacity, al Bahlul  
13 created several instructional and motivational  
14 recruiting video tapes on behalf of al Qaida.  
15

16 Usama bin Laden personally tasked al Bahlul to create  
17 a video glorifying, among other things, the attack on  
18 the USS Cole. Al Bahlul created this "USS Cole"  
19 video to recruit, motivate and "awaken the Islamic  
20 Umma to revolt against America" and to inspire al

1 Qaida members and others to continue the violent  
2 attacks against the property and nationals (both  
3 military and civilian) of the United States and other  
4 countries.

5  
6 After being placed on alert by Usama bin Laden in the  
7 weeks just before the September 11, 2001 attacks, al  
8 Bahlul assisted Usama bin Laden and other al Qaida  
9 members in mobilizing and moving from Kandahar.

10  
11 On September 11, 2001, Usama bin Laden tasked al  
12 Bahlul to set up a satellite connection so that bin  
13 Laden and other members of al Qaida could see news  
14 reports. Despite his efforts, al Bahlul was unable  
15 to obtain a satellite connection because of  
16 mountainous terrain.

17  
18 In the weeks immediately following the attacks of  
19 September 11, 2001, Usama bin Laden tasked al Bahlul  
20 to obtain media reports concerning the September 11th

1 attacks and to gather data concerning the economic  
2 damage caused by these attacks.

3  
4 In September 2001, al Bahlul served as a bodyguard  
5 and provided protection for Usama bin Laden. While  
6 traveling with Usama bin Laden, al Bahlul was armed  
7 and wore an explosives-laden belt so that he could  
8 provide Usama bin Laden with physical security and  
9 protection.

10  
11 Presiding Officer: Okay. As I said earlier, I've been  
12 detailed to this case by the appointing authority.  
13 I've been previously sworn.

14  
15 Trial, what have you got in voir dire for me?

16  
17 A.PROS1: Sir, just a very few couple questions. We've  
18 previously reviewed your voir dire questioning, your  
19 biography, answers from previous proceedings through  
20 public records so it should be very brief.

1  
2 During the previous commission session, the accused  
3 had made references that are contained within the  
4 record. Specifically with regard to September 11th  
5 and the Al Qaida membership which he is charged.

6  
7 Do you remember those statements, sir?

8  
9 Presiding Officer: I've read the thing. I remember a  
10 reference. All I remember is something like, I'm a  
11 member of Al Qaida or something -- it was words of  
12 that effect. Go on.

13  
14 A.PROS1: Well the fact that this statement was made and it  
15 is a basis for one of the charges, do you think in  
16 any way that that might be able to impact your  
17 ability to rule impartially?

18  
19 Presiding Officer: Did you read the rest of that?

1 A.PROS1: Yes, sir.

2

3 Presiding Officer: And what did I say?

4

5 A.PROS1: Well in fact that you stopped it and you said  
6 that "I don't believe that this is evidence" and at  
7 that time you required the members that were in the  
8 courtroom to disregard that.

9

10 Presiding Officer: And they agreed with that ruling,  
11 correct?

12

13 A.PROS1: Oh, absolutely.

14

15 Presiding Officer: Thank you.

16

17 A.PROS1: So my.

18

19 Presiding Officer: So there.

20

1 A.PROS1: Well, my question though is though based on MCO  
2 Number 1, because it has changed. Your rule is now  
3 besides you'd make legal rulings as opposed to that.  
4 I have no real objections to you.  
5

6 Presiding Officer: I don't understand what your question  
7 is. If I were -- do you mean -- is the fact that I  
8 was sitting here as the Presiding Officer and heard  
9 the statement which was garbled at best and  
10 inconclusive certainly, is that somehow going to  
11 affect my rulings in this case. Is that your  
12 question?  
13

14 A.PROS1: Yes, sir.  
15

16 Presiding Officer: No.  
17

18 A.PROS1: And in light of the recent decisions and  
19 statements made by the accused today to boycott the  
20 proceedings. Do you feel that it will have any

1        impact on your ability to be impartial to the accused  
2        in this case?

3  
4    Presiding Officer:    I will be impartial in this case.    I  
5        don't -- I'm not impartial towards either side.    I'm  
6        impartial.

7  
8    A.PROS1:    Yes, sir.    Have you reviewed any academic  
9        material since or statements from any press,  
10       nongovernmental organizations since the recess in  
11       August of 2004 regarding commissions?

12  
13   Presiding Officer:    I must have seen a bazillion articles  
14       about the commissions.

15  
16   A.PROS1:    Any ideas on your ability to be impartial based  
17       on these?

18  
19   Presiding Officer:    No.



1 A.PROS1: I said, sir, we've actually done a substantial  
2 amount of review of your record, your biography, and  
3 we believe that there's no evidence of impartiality  
4 and specific or -- let me change that.

5  
6 Presiding Officer: I want to thank you for that.

7  
8 A.PROS1: No, we believe that there's no evidence that  
9 would question your impartiality and we have no  
10 challenges and that's especially in light of what we  
11 consider the -- your bending over backwards today to  
12 make sure that the accused fully knew and understand  
13 that and the government has no objection.

14  
15 Presiding Officer: Okay. Defense you got any questions?

16  
17 DC: Sir, before I -- may I address another issue?

18  
19 Presiding Officer: Pardon?

1 DC: May I address another issue?

2

3 Presiding Officer: Sure.

4

5 DC: I make a motion to abate the proceedings because this  
6 set up with only the Presiding Officer in here and  
7 the rest of the commission members is inconsistent  
8 with the President's Military Order. Your Honor is  
9 on the record a year ago saying that he couldn't have  
10 a proceeding without all the other members there.  
11 The legal advisor to the appointing authority is on  
12 the record as saying the President's Military Order  
13 does not allow proceedings outside the appointing  
14 authority, outside the presence of all the members.  
15 And to my understanding the President's Military  
16 Order hasn't changed and this proceeding cannot  
17 continue without all of the members of the commission  
18 present.

19

1 Presiding Officer: Okay. You don't mind if I paraphrase  
2 your --  
3

4 DC: No, Your Honor.  
5

6 Presiding Officer: Okay. What you are saying is that you  
7 want me to abate the proceedings because you perceive  
8 a fatal flaw between the PMO and MCO Number 1.  
9 Namely, you believe that the only way the MCO Number  
10 1 could be correct would be if it said all the  
11 commission members have to be here.  
12

13 DC: I'm a little confused. I believe what I'm saying is  
14 that the President's Military Order trumps all. The  
15 President's Military Order says that all the members  
16 must be here. So all the members must be here. If  
17 Your Honor's goal is -- if, Your Honor, is following  
18 the provisions of MCO Number 1 on this issue then,  
19 yes, it is a fatal flaw and the proceedings should be  
20 abated.

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Presiding Officer: Okay you are given leave to brief that  
issue. You believe that there's a fatal flaw, I'll  
use that term, between the PMO and the MCO.

DC: I do.

Presiding Officer: No, I'm talking.

DC: Oh, I apologize, Your Honor.

Presiding Officer: I'm just talking. You believe there's  
a fatal flaw and your proposed solution is that we do  
nothing until this fatal flaw is solved somehow.  
That's what abatement really means in this case. I  
will tell you now that you may brief this issue to  
me. I will consider the issue. If you were to  
review the documents submitted in the case of US v  
Hicks, which we stopped back in November -- as a  
matter of fact you were here in November of 2005. We

1 stopped it. You'll see that that's one of the  
2 matters briefed. I am not going to abate the  
3 proceedings to wait for someone, an unknown someone  
4 to make a decision. However, your request for  
5 abatement is noted it's just denied. You may brief  
6 it and I will resolve it.

7  
8 DC: Your Honor, I would like to voir dire you. I'm not  
9 prepared to voir dire you. If I'm forced to go  
10 forward and try to voir dire you, Mr. al Bahlul is  
11 not going to receive a full and fair trial.

12 Respectfully, I've been in the Army for 70 days and  
13 there's been a few issues that have come up other  
14 than voir dire.

15  
16 Presiding Officer: Okay, looking at -- now you get to  
17 stand up this time. Look at RE-126. I ordered you  
18 to prepare voir dire on the 16th of December. On  
19 19 December you e-mailed me back and said you really  
20 mean this is an order. And on the 20th of December I

1 explained it to you and told you to prepare voir  
2 dire. Is that correct? It's all in RE-126.

3  
4 DC: That's true.

5  
6 Presiding Officer: Okay. Have you asked for any  
7 materials? You heard the trial counsel -- the  
8 prosecutor refer to various materials. Have you  
9 asked for those materials? Do you have them, you've  
10 seen them? You know, the prior sessions and the voir  
11 dire materials?

12  
13 DC: I have materials.

14  
15 Presiding Officer: Yeah, okay. RE-138 now being given to  
16 the court reporter is a collection of various voir  
17 dire materials. I believe you have it, Major  
18 Fleener, but I'm just putting it on the record so  
19 there's no question. It is my opinion that you  
20 should have prepared voir dire and that you've had

1 enough time to do it. However, under the  
2 circumstances, I am not willing to force -- to force  
3 you to undertake that portion of the -- of Mr. al  
4 Bahlul's defense. I am concerned about Mr. al  
5 Bahlul.

6  
7 And before we go on, I want to say this so there's no  
8 question on the record. Major Fleener was brought on  
9 the case on the 3rd of November 2005. I believe that  
10 the senior prosecutor in this case has been detailed  
11 to this case since some time in April of 2005. I  
12 note that the senior prosecutor has sitting next to  
13 him two other prosecutors. And we also heard the  
14 senior prosecutor, someone mention a fourth  
15 prosecutor. Looking at Major Fleener, I see to his  
16 left Mr. al Bahlul, the translator, and I don't see  
17 any other help for Major Fleener. No one else. I  
18 have not seen any evidence in this case. Based on  
19 matters that have been passed in other cases, I  
20 understand that there are gillions of gigabytes of

1 material that Major Fleener is going to have to go  
2 through. The motions and evidence and discovery are  
3 horrendous and I personally do not see how Major  
4 Fleener can be expected to adequately represent Mr.  
5 al Bahlul by himself, especially given the  
6 circumstances in which Mr. al Bahlul is boycotting  
7 the proceedings. And I expect not communicating as  
8 well with Major Fleener as Major Fleener might like  
9 in the best of all possible worlds.

10  
11 Therefore, while I am not happy, Major Fleener, that  
12 you are not prepared to conduct voir dire, I  
13 understand that you may not be able to conduct voir  
14 dire. This afternoon I will tell you -- I'll tell  
15 all of you all whether we will have a session  
16 tomorrow to conduct voir dire or not. I don't know.  
17 I'll have to think and I am going to, I'll think  
18 about whether we'll have a session tomorrow to  
19 conduct voir dire. But, I do urge you, Major  
20 Fleener, to communicate to Colonel Sullivan, the



1 Chief Defense Counsel, my concerns that you are  
2 standing here representing Mr. al Bahlul all by  
3 yourself.

4  
5 Consequently, you do not need to conduct voir dire,  
6 but no, at this time. But I am going to proceed on  
7 having given you notice and opportunity. If at a  
8 later time you conduct voir dire and I am required to  
9 grant a challenge for cause, then we will start all  
10 over again.

11  
12 DC: You are going to give me -- you'll give me time to do  
13 voir dire later, of Your Honor?

14  
15 Presiding Officer: Yeah. Well, that was the whole point  
16 of that. Yeah. Right. Yeah, I'm sorry. That was  
17 the whole point of that. I am going to give you a  
18 chance to do voir dire. This afternoon I will decide  
19 whether I am going to make you do it tomorrow or some  
20 later time.

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DC: I'd ask, Your Honor, to consider when setting the session, I have to call my advisor to determine how I proceed -- how I proceed forward in a case with what appears to be a fatal communication problem and now two ethics opinions possibly outstanding and no resolution other than Your Honor's orders, so I will be busy.

Presiding Officer: Oh, I didn't say you weren't going to be busy. And I didn't say I was going to set it for tomorrow.

DC: Yes, sir. I just --

Presiding Officer: I said I would tell you -- Major Fleener, I will certainly make no decisions without taking input from you and from the prosecutors.

1       Okay.  Therefore, since there are no challenges extent,  
2       other than Major Fleener's structural fatal flaw  
3       challenge to the operations, I'm not going to -- I am  
4       going to continue on.

5  
6       Okay, before we get to closing the session up for the  
7       time being, have counsel for both sides had an  
8       opportunity to read and understand the provisions of  
9       MCO Number 1, governing protected information, trial?

10  
11  PROS:  Yes, Your Honor.

12  
13  Presiding Officer:  Defense?

14  
15  DC:  I've read the MCO, sir.

16  
17  Presiding Officer:  Do you have any questions about them?

18  
19  DC:  Not at this time.  I haven't -- I understand drafts  
20       have been prepared --

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Presiding Officer: No, no. No, I'm not talking about  
protective orders. I mean the provisions of the MCO  
about protected information.

DC: Yes, sir, I have understood that.

Presiding Officer: Okay you understand those?

DC: Yes, sir.

Presiding Officer: Okay, either side thinks you are going  
to be bringing up anything that's protected, you have  
got to tell me beforehand so I don't have any  
confusions in courts.

Trial -- Prosecution, despite your wishes, I am not  
going to require the defense counsel to present motions  
at this time.

1       Is that okay? One of you say, yeah.

2

3   PROS: Yes, sir.

4

5   Presiding Officer: Okay. I thought so.

6

7       Major Fleener, I am going to give you an opportunity to  
8       attempt again to talk to your client and I realize that  
9       you are attempting to talk to your client. I am now  
10      going to call upon him to plea. I'm not going to  
11      require you to enter a plea. If you want to enter a  
12      plea, you may. But I am going the call upon him to  
13      plea.

14

15      You got any -- do you understand what I am saying?

16

17   DC: Yes, sir. Can I -- can I have a few seconds, please?

18

19   Presiding Officer: Sure.

20

1 DC: Do I have the opportunity to enter the plea for Mr. al  
2 Bahlul?

3

4 Presiding Officer: Mr. al Bahlul can either enter a plea  
5 or not enter a plea. At my discretion, I could, of  
6 course, enter a plea of not guilty for him.

7

8 DC: We'd ask --

9

10 Presiding Officer: I do not intend to do that right now.  
11 I am still going to try to give you time to work with  
12 Mr. al Bahlul. If you want me -- if you want me to  
13 enter a plea, I will. This way I've let you defer  
14 everything.

15

16 DC: And thank you.

17

18 Presiding Officer: You want me to defer pleas, right?

19

20 DC: Please.

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Presiding Officer: Okay. Defense counsel, you want to  
defer any motions, right?

DC: Yes, Your Honor.

Presiding Officer: Okay, we'll defer them until I set a  
motion schedule. Obviously, I'll let everyone in on  
that.

Accused and counsel, please rise, just for this once.

Okay. Let the record reflect that Mr. al Bahlul is not  
rising.

Mr. al Bahlul, how do you plea?

Okay you can be seated, Major Fleener. The court does  
not require a plea from Mr. al Bahlul at this time and  
the court will not enter unless the prosecution can

1 show it that it is required to at this specific time, a  
2 plea of not guilty -- will not enter a plea of not  
3 guilty on his behalf.

4  
5 Trial, you got any reason I am required to enter at  
6 this time?

7  
8 PROS: I don't know that you are required to enter, sir. No.

9  
10 Presiding Officer: Thank you. Okay. So there is no  
11 question we have all the current POMS  
12 and they will be entered on the record as an RE. The  
13 current filings inventory has been entered on the  
14 record as an RE and if any counsel got any objections  
15 to the filings inventory or correctness, you all know  
16 how to get a hold of this.

17  
18 Yesterday we had a session under the provisions of MCI  
19 8, present at which were prosecutors, defense counsel,  
20 and myself. We discussed several matters. First of



1 all, I approved Major Fleener's request to delay the  
2 start of the session from nine to ten today. We  
3 discussed a general order of events recognizing as came  
4 true that the order of events might change. I stated a  
5 general date of submissions for motions on global  
6 issues. Those are the one of the world challenge to  
7 the commission process and non-case specific motions.  
8 I'll provide a motion schedule, but those motions will  
9 generally most likely be due the week of 20 February.

10  
11 Case specific motions will be due the week of,  
12 generally, the week of 27 March. As a planning matter  
13 only and I emphasize that, both sides agree that 15 May  
14 would be a good planning start. I once again note that  
15 Major Fleener has only been detailed to this case since  
16 the 3rd of November and he has no assistant counsel  
17 detailed to the case. I do not know the evidence in  
18 this case, but just preparing the 58 motions that I  
19 received in Hicks, he couldn't even read those 58  
20 motions between now and the 15th of May.

1  
2 Please, Major Fleener, as I asked you before, pass your  
3 concerns to Colonel Sullivan about you being on this  
4 case by yourself.  
5

6 DC: Yes, sir.  
7

8 Presiding Officer: Okay. Anything else by either side  
9 before we recess or meet on my call?  
10

11 PROS: Not from the government, sir.  
12

13 DC: No, sir.  
14

15 Presiding Officer: Court's in recess.  
16

17 [The commission hearing recessed at 1231, 11  
18 January 2006.]  
19

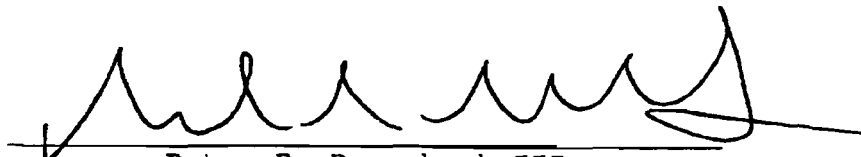
20 [END OF PAGE]

**AUTHENTICATION OF  
FINAL SESSION TRANSCRIPT**

in the case of:

***United States v. Ali Hamza Sulayman al Bahlul***  
a/k/a/ Ali Hamza Ahmed Suleiman al Bahlul  
a/k/a Abu Anas al Makki  
a/k/a Abu Anas al Yemeni  
a/k/a Mohammad Anas Abdullah Khalidi

This is to certify that the Pages 19 through 138 are an accurate and verbatim transcript of the proceedings held in the above styled case on January 11, 2006.



Peter E. Brownback III  
Colonel, USA

13 FEBRUARY 2006  
DATE